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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Federal Trade Commission,

Plaintiff,

v.

Jason Cardiff, et al.,

Defendants.

Case No. 5:18-CV-02104-DMG (PLA)

PLAINTIFF FTC'S RESPONSE TO
CARDIFF DEFENDANTS'
STATEMENT OF GENUINE
DISPUTES

Hearing Date: October 9, 2020

Time: 2:00 p.m.

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Preface to Plaintiff FTC’s Response to Cardiff Defendants’ Statement of Genuine Disputes

In filing their Statement of Genuine Disputes (Dkt. 491-1, “DSGD”), the Cardiffs failed to abide by the Court’s Standing Order, Dkt. 319, p. 7, which sets forth the required format: “The lefthand column must restate the allegedly undisputed fact, and the righthand column must state either that it is undisputed or disputed... the opposing party may submit additional material facts that bear on or relate to the issues raised by the movant... [which] shall continue in sequentially numbered paragraphs and shall set forth in the right hand column the evidence that supports that statement.”

The Cardiffs did not repeat the FTC’s facts and evidentiary citations, and in most cases they did not use the “undisputed/disputed” signal required by the Court. In the numerous cases where the Cardiffs failed to dispute (or in their words, “deny”) a fact, the Court should treat the fact as undisputed. The Cardiffs did not formally propose any Additional Material Facts, but made several repeated assertions throughout their DSGD that could have been properly characterized as “Additional Material Facts.” In the interest of efficiency, the FTC responds below to these assertions, which lack evidentiary support and are actually contradicted by the evidence, and has added an Additional Material Facts section (see SUF 938-941) to collect the evidentiary citations for the FTC’s Response to these claims.

In their DSGD, the Cardiffs group many of the FTC’s facts together, providing only general responses or vague objections to the specific allegations and evidentiary citations contained in each of the FTC’s facts. They rely heavily on several boilerplate objections, including a “lack of timeframe” objection that is applied indiscriminately, including in cases where the date or date range in question is clearly stated in the fact itself. They also repeat close variations of an objection in which they claim to have ceased advertising and marketing the challenged products on January 25, 2018, January 28, 2018, or in or about

1 February 2018 (this objection appears more than 80 times, covering 453 of the
2 FTC’s facts), and a related objection in which they claim they stopped running TV
3 advertisements through the media company Mercury Media in October (TBX-
4 FREE) and December 2017 (Eupepsia Thin) (this objection appears 28 times,
5 covering 173 facts total). The FTC addresses these two “cessation of
6 advertising/marketing” objections here to enable a more efficient Response to the
7 Cardiffs’ DSGD.

8 **Boilerplate Objection 1:** “The last air date and services provided by Mercury
9 Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at
10 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8.”

11 The Cardiffs make this objection at least 26 times, covering 176 facts total.
12 Of all the times they repeat this objection, the TBX-FREE and Eupepsia Thin TV
13 advertising placed by Mercury Media is implicated in just a handful of the facts.
14 Other facts where this objection appears address issues as varied as TV advertising
15 placed by other media agencies, non-TV advertising, the filming date of the
16 Eupepsia Thin infomercial, the lack of clinical studies to prove deceptive
17 advertising claims, the FTC’s health experts’ analyses of the challenged
18 advertising claims, the fact that Redwood was also sued by the New England
19 Journal of Medicine for falsely claiming the prestigious journal’s endorsement,
20 ringless voicemail marketing, and Prolongz advertising.

21 Even for the facts that do implicate the TV advertising placed by Mercury,
22 the Cardiffs provide the wrong cut-off date of that advertising. They cite to the
23 Declaration of Brian Young (of Broad Beam Media), Dkt. 432-2 at 3-8, submitted
24 by the FTC, to support their contention that the last date TBX-FREE advertising
25 was placed through Mercury was October 30, 2017. However, the declaration of
26 John Cabrinha (of River Direct, Inc.) shows that Mercury’s last airing of a TBX-
27 FREE long-form advertisement was February 12, 2018. Dkt. 432-1, p. 3 (¶5), p.
28 21. (The TV advertising placed through Mercury is covered in two separate

1 declarations. In 2019, Mercury was sold and its assets and records were purchased
2 by two companies, Broad Beam (short-form advertising) (Dkt. 432-2 at 2) and
3 River Direct (long-form advertising) (Dkt. 432-1 at 2).)

4 **Boilerplate Objection 2:** “Defendants stopped its [sic] marketing campaigns in or
5 about February, 2018.” [and close variants, including variants citing January 25,
6 2018 and January 25, 2018 as the cut-off date]

7 Close variations of an objection in which the Cardiffs claim to have ceased
8 advertising or marketing in February 2018 appear at least 80 times, covering 453
9 facts. Defendants did not cease advertising or marketing in February 2018. SUF
10 938. They continued to advertise on websites, Facebook, and via email, ringless
11 voicemails, outbound sales calls, press releases, and Amazon.

12 The Cardiffs also admit that Defendants were still selling TBX-FREE,
13 Eupepsia Thin, and Prolongz on October 12, 2018. SUF 232.

14 Photos and documents taken at the October 12, 2018 Immediate Access
15 evidence Redwood’s ongoing business operation, including boxes of product ready
16 to ship to consumers, bins full of inventory, sales scripts above the desk of one of
17 Redwood’s sales representatives, and an order tracking spreadsheet, among
18 numerous other indicators of an ongoing business. Dkt. 277, p. 11-14.

19 **Boilerplate Objection 3:** “Defendants stopped marketing and changed the claims
20 that were made on their websites in or about February, 2018.”

21 In response to this specific claim about their websites, which they repeat at
22 least 23 times in their DSGD, the FTC submits and cites to copies of Defendants’
23 websites archived by the Internet Archive showing the challenged advertising
24 claims remained on websites for TBX-FREE and Eupepsia Thin at least as late as
25 August 2018 and for Prolongz at least as late as October 2018. See SUFs 939-941.

I. Pre-Complaint Investigation

FTC Fact	FTC Citation ¹	Cardiff Admit/Objection ²
1. The FTC issued a Civil Investigative Demand (“CID”) to Redwood Scientific Technologies, Inc. (“Redwood”) on August 3, 2017.	Sands 3rd Dec. (PX-51), p. 1, ¶ 2 & p. 21 (Att. 1).	Admit. At no time did the Cardiff’s receive a cease and desist letter. Dkt. 253-1 Declaration of Jason Cardiff ¶3, 26. Had the Cardiffs received warning letters from the FTC they would have complied with any demands, as was shown by their prior behavior of editing and removing claims made after receiving the CID. Ex. A, Jason Cardiff Declaration ¶4; Ex. B, Eunjung Cardiff Declaration ¶49. This CID request did not

¹ Page citations to previously-filed declarations are to ECF designations, unless otherwise indicated.

² The FTC has reproduced the Cardiffs’ DSGD as accurately as possible, without correcting for misspellings or other errors.

		inquire about any information pertaining to Prolongz.
FTC Response to SUF 1: The Defendants admit the fact. Their extraneous argument should be disregarded.		
2. The CID's specifications required, among other things, that Redwood produce documents and information pertaining to the advertising of TBX-FREE and Eupepsia Thin oral film strips and pertaining to autoship programs and unauthorized charges.	Sands 3rd Dec. (PX-51), p. 1, ¶ 2 & p. 25-32 (Att. 1). Walker Dec. (PX-32), p. 4, ¶ 15 & p. 234, 246 (Att. 25).	Admit.
3. The CID and the accompanying cover letter instructed Redwood to preserve all documents that may be responsive to the CID's requests.	Sands 3 rd Dec. (PX-51), p. 1, ¶ 2, & p. 20, 23 (Att. 1).	Admit.

<p>4. Redwood failed to comply with the CID and the FTC initiated an enforcement action against Redwood on October 30, 2017 in the U.S. District Court for the Central District of California.</p>	<p>Sands 3rd Dec. (PX-51), p. 1, ¶ 3.</p> <p><i>FTC v. Redwood Sci. Tech., Inc.</i>, No. 2:17-cv-07921-SJO-PLA (C.D. Cal. 2017) (Otero, J.) (Dkt. 1) (hereafter “<i>FTC v. Redwood</i>”).</p>	<p>Deny as to Redwood failing to comply with the CID. Redwood supplied information responding to requests for documents and interrogatories through Tracy Green. Redwood supplemented their documents over a period of six months. The CID was extensive and asked for copious amounts of documents and Redwood complied to the best of their ability and to meet the unrealistic deadlines given by the FTC.</p>
<p>FTC Response to SUF 4: The Cardiffs do not dispute that the Commission filed suit to enforce its CID on October 30, 2017. Defendants had not produced a single document or answered a single interrogatory by the CID deadline or Redwood’s own proposed extended deadlines, resulting in a contempt proceeding brought by the FTC. <i>FTC v. Redwood</i>, Dkt. 1, p. 6, ¶ 11. Redwood provided its first substantive response on March 22, 2018, two months <i>after</i> this Court issued an Order compelling Redwood to comply with the CID and five months after the FTC initiated its CID enforcement action (see SUF 7).</p>		
<p>5. On January 25, 2018, this Court</p>	<p>Sands 3rd Dec. (PX-51), p. 1-2, ¶ 4.</p>	<p>Admit that the Order was entered by the Court,</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	<p>issued an Order compelling Redwood to comply with the FTC's CID.</p>	<p>See <i>FTC v. Redwood</i>, Order Compelling Compliance With Civil Investigative Demand and Vacating Hearing (Dkt. 17) (Jan. 25, 2018).</p>	<p>however Deny as to Redwood failing to comply with the CID. Redwood supplied information responding to requests for documents and interrogatories through Tracy Green. Redwood supplemented their documents over a period of six months. The CID was extensive and asked for copious amounts of documents and Redwood complied to the best of their ability and to meet the unrealistic deadlines given by the FTC. Additionally, Redwood ensured that it complied with any concerns that FTC had over its advertising by cancelling all paid advertising both TV and print on January 28, 2018.</p>
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FTC Response to SUF 5: The Cardiffs admit the fact. Their extraneous

argument should be disregarded.

6.	On March 6, 2018, this Court issued an Order for Redwood to Show Cause why it should not be held in contempt for failure to comply with the FTC's CID.	Sands 3rd Dec. (PX-51), p. 1-2, ¶ 4. See <i>FTC v. Redwood</i> , Order To Show Cause (Dkt. 20) (March 6, 2018).	Admit that the Order was issued by the Court, however Deny as to Redwood failing to comply with the CID. Redwood supplied information responding to requests for documents and interrogatories through Tracy Green. Redwood supplemented their documents over a period of six months. The CID was extensive and asked for copious amounts of documents and Redwood complied to the best of their ability and to meet the unrealistic deadlines given by the FTC.
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FTC Response to SUF 6: The Cardiffs admit the fact. Their extraneous argument should be disregarded.

7.	The FTC received from Redwood answers to interrogatories and	Sands 3rd Dec. (PX-51), p. 2, ¶ 5. Walker Dec. (PX-32), p.	Admit
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1	a large volume of	3-5, ¶¶ 14-18 & p. 234-	
2	business records	426 (Atts. 25-30).	
3	between March 22,		
4	2018 and June 14,		
5	2018.		
6	8. Redwood's CID	Sands 1st Dec. (TRO PX-	Admit
7	responses were	1), Dkt. 7, p. 1-2, ¶¶ 2-3	
8	certified as true by	& Dkt. 7, p. 54, 168.	
9	the then-Director of		
10	Operations for	See Walker Dec. (PX-	
11	Redwood Scientific	32), p. 4, ¶ 15 (had	
12	Technologies, Inc.,	authority to certify as	
13	Danielle Cadiz,	Redwood's Director of	
14	a/k/a Danielle	Operations and records	
15	Walker.	custodian).	
16	9. Redwood's	See Sands 3rd Dec. (PX-	Deny. Defendants object
17	responses to the	51), p. 2, ¶ 6.	to this statement as
18	FTC's CID did not		lacking in time frame and
19	contain any video		is non-specific as to
20	advertising or		which CID is the subject
21	dissemination		of the statement.
22	schedules for TBX-		Whatever "schedules" for
23	FREE or Eupepsia		"video advertising or
24	Thin.		dissemination" Redwood
25			had at the time relating to
26			TBX-FREE OR Eupepsia
27			Thin would have been
28			included in the data

		dumps provided to the FTC.
<p>FTC Response to SUF 9: The Cardiffs’ vague speculation that “whatever ‘schedules’... Redwood had... would have been included in the data dumps provided to the FTC” does not create an issue of genuine fact because they do not claim to have produced any video advertising or dissemination schedules, nor do they identify any such materials from Redwood’s CID production to the FTC. In fact the FTC sent only one CID to Redwood. Sands 3rd Dec. (PX-51), p. 2, ¶ 6. The “time frame” is the period during which Redwood, pursuant to Court Orders and under threat of contempt, submitted materials in response to the FTC’s one and only CID. Redwood’s first response was submitted on March 22, 2018. Its final response was submitted on September 24, 2018. See SUF 7.</p>		
<p>10. Materials collected from Redwood company offices as part of the Immediate Access authorized by the Temporary Restraining Order issued by Judge Otero on October 10, 2018, also did not contain any video advertising or dissemination schedules.</p>	<p>See Sands 3rd Dec. (PX-51), p. 2, ¶ 7.</p>	<p>Neither admit nor deny because Defendants are unaware if these documents ever existed or, if they existed, were ever in their possession. If these documents existed and were in the Defendants possession, it would have been included in the data dump provided the FTC months before the lawsuit was filed.</p>

FTC Response to SUF 10: The Cardiffs’ use of the phrase “neither admit nor deny” is the functional equivalent of not disputing the fact.

The Cardiffs admit that Jason Cardiff received the final versions of all tv advertisements for TBX-FREE, Eupepsia Thin, and Prolongz from Ty Sherrell (see SUF 11), yet do not explain why those videos were not among Redwood’s records.

11. Ty Sherrell of FX Web Media, LLC, sent Jason Cardiff final versions of all television advertisements he produced, including advertisements for TBX-FREE, Eupepsia Thin, and Prolongz.	Sherrell Dec. (PX-34), p. 2, ¶ 3; p. 3, ¶ 5.	Admit
12. In approximately May 2018, Jason Cardiff told Danielle Walker and Gus Navarro to delete anything responsive to the FTC’s CID, including referencing an 88%	Walker Dec. (PX-32), p. 5, ¶ 19. See also Melendez Dec. (PX-35), p. 9, ¶ 33 (Navarro deleted files from her computer, telling her that Jason Cardiff had instructed him to delete everything	Jason Cardiff did NOT tell Danielle Walker or Gus Navarro to delete anything responsive to the FTC’s CID. Ex. A, Jason Cardiff Declaration ¶99.

1	success rate; any	from the laptops of	
2	documents showing	certain employees,	
3	that he and Eunjung	including hers).	
4	Cardiff approved		
5	marketing and		
6	advertising		
7	distribution; and		
8	any evidence		
9	showing that they		
10	had created the files		
11	(e.g., Facebook ads,		
12	content for paid		
13	advertisements).		

FTC Response to SUF 12: Jason Cardiff’s general denial is contradicted by the detailed sworn testimony of two former employees, including one who had files deleted from her own computer. Specifically, Jason Cardiff instructed Danielle Walker and Gus Navarro, Redwood’s IT Manager, “to destroy documents on all Redwood employees’ computers that were responsive to the FTC’s CID, including documents related to Redwood’s paid advertising of oral film strips on Facebook. I also specifically remember that he told us to delete anything referencing an 88% success rate; any documents that showed that he and Eunjung Cardiff approved marketing and advertising distribution; and any evidence showing that they had created the files.” Walker Dec. (PX-32), p. 5, ¶ 19. It is also not a coincidence that Redwood never produced video advertising or dissemination schedules to the FTC in response to its CID and that no such files were discovered when the receiver took immediate access of Redwood’s business offices on October 12, 2018. See Sands 3rd Dec. (PX-51), p. 2, ¶¶ 6, 7.

13. Gus Navarro carried	Melendez Dec. (PX-35),	Object as to vague. What
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<p>1 out Jason Cardiff's</p> <p>2 instructions.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p>	<p>p. 9, ¶ 33.</p>	<p>instructions?</p> <p>Deny to the extent that</p> <p>the "instructions" were to</p> <p>destroy documents</p> <p>because no such</p> <p>instruction was ever</p> <p>given. Ex. A, Jason</p> <p>Cardiff Declaration ¶99.</p>
<p>9 FTC Response to SUF 13: Jason Cardiff's denial is contradicted by the sworn</p> <p>10 testimony of a former employee who had files deleted from her own computer.</p> <p>11 SUF 13 is not vague; it clearly follows from SUF 12.</p>		
<p>12 14. The documents</p> <p>13 destroyed included</p> <p>14 documents related</p> <p>15 to Redwood's paid</p> <p>16 advertising of oral</p> <p>17 film strips on</p> <p>18 Facebook.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Walker Dec. (PX-32), p.</p> <p>5, ¶ 19.</p>	<p>No documents were</p> <p>destroyed as a</p> <p>consequence of any</p> <p>instruction by Jason</p> <p>Cardiff because no such</p> <p>instruction was given by</p> <p>Jason Cardiff. Moreover,</p> <p>to the best of Jason</p> <p>Cardiff's knowledge, no</p> <p>"documents related to</p> <p>Redwood's paid</p> <p>advertising of oral thin</p> <p>film strips on Facebook"</p> <p>ever existed because as</p> <p>Jason Cardiff understood</p> <p>the process, all "paid</p> <p>advertising" on Facebook</p>

		was accomplished on line thru the Facebook's on line portal, so no "documents" relating to such "paid advertising" were ever created. Documentation of such "paid advertising" is likely something that would be maintained by Facebook. Ex. A, Jason Cardiff Declaration ¶100.
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FTC Response to SUF 14: Jason Cardiff's general denial is contradicted by the detailed sworn testimony of Danielle Walker and he does not explain why, e.g., Redwood did not produce any Facebook ads in response to the Commission's CID.

15. [reserved]		
16. [reserved]		
17. [reserved]		

II. Defendants

A. Individual Defendants

Jason Cardiff

FTC Fact	FTC Citation	Cardiff Admit/Objection
18. Jason Cardiff stated in a sworn	J. Cardiff Dec., Dkt. 265-2, p. 2.	Admit.

1	declaration that he		
2	“was an owner,		
3	officer, director		
4	and/or member of		
5	the business		
6	defendants		
7	identified as		
8	Defendants in [this]		
9	action.”		
10	19. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
11	admits that during	p. 1, ¶ 1 (Sanger Dec.	
12	some or all of the	(PX-52), p. 1, ¶ 4 & p. 6	
13	time period from	(Att. 1)).	
14	January 1, 2014 to		
15	October 3, 2018, he		
16	was an owner of		
17	Redwood Scientific		
18	Technologies, Inc.		
19	(California).		
20	20. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
21	admits that during	p. 2, ¶ 2 (Sanger Dec.	
22	some or all of the	(PX-52), p. 1, ¶ 4 & p. 7	
23	time period from	(Att. 1)).	
24	January 1, 2014 to		
25	October 3, 2018, he	See also Walker Dec.	
26	was the President of	(PX-32), p. 37 & p. 593-	
27	Redwood Scientific	598 (Att. 59)	
28	Technologies, Inc.	(biographies of Jason	

1	(California).	Cardiff on	
2		redwoodamerica.com and	
3		redwoodscientific.co).	
4	21. Jason Cardiff	Sands 1st Dec. (TRO PX-	Admit.
5	owned 100% of	1), Dkt. 7, p. 51, ¶ 142 &	
6	Redwood Scientific	Dkt. 13-1, p. 7, 13 (Att.	
7	Technologies, Inc.	164) (Jason Cardiff's	
8	(California).	shares of Redwood	
9		California represented	
10		100% of oustanding	
11		shares).	
12	22. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
13	admits that during	p. 2, ¶ 3 (Sanger Dec.	
14	some or all of the	(PX-52), p. 1, ¶ 4 & p. 7	
15	time period from	(Att. 1)).	
16	January 1, 2014 to		
17	October 3, 2018, he	See also Walker Dec.	
18	was the Chief	(PX-32), p. 2, ¶ 9 & p. 37	
19	Executive Officer	(Att. 8); p. 38 (Att. 9);	
20	of Redwood	and p. 9, ¶ 37 & p. 593-	
21	Scientific	598 (Att. 59)	
22	Technologies, Inc.	(biographies of Jason	
23	(California).	Cardiff on	
24		redwoodamerica.com and	
25		redwoodscientific.co).	
26	23. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
27	admits that during	p. 2, ¶ 4 (Sanger Dec.	
28	some or all of the	(PX-52), p. 1, ¶ 4 & p. 7	

1	time period from	(Att. 1)).	
2	January 1, 2014 to		
3	October 3, 2018, he	See also, Walker Dec.	
4	was a member of	(PX-32), p. 2, ¶ 9 & p. 37	
5	the Board of	(Att. 8); p. 39-40 (Att.	
6	Directors of	10).	
7	Redwood Scientific		
8	Technologies, Inc.		
9	(California).		
10	24. Jason Cardiff was	Walker Dec. (PX-32), p.	Admit.
11	the Secretary and	2, ¶ 9 & p. 37 (Att. 8).	
12	Chief Financial		
13	Officer of Redwood		
14	Scientific		
15	Technologies, Inc.		
16	(California).		
17	25. Jason Cardiff was	Walker Dec. (PX-32), p.	Admit.
18	the Chief Executive	2, ¶ 9 & p. 41 (Att. 11)	
19	Officer, President,	(Director); p. 46 (Att. 12)	
20	and a Director of	(President); p. 48, 99	
21	Redwood Scientific	(Att. 13) (Chief	
22	Technologies, Inc.	Executive Officer,	
23	(Nevada).	President, and Director).	
24			
25		Sands 1st Dec. (TRO PX-	
26		1), Dkt. 7, p. 51, ¶ 141-	
27		142 & Dkt. 13-1, p. 5, 7,	
28		58 (Atts. 163-164).	

1	26.	Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
2		admits that during	p. 3, ¶ 7 (Sanger Dec.	
3		some or all of the	(PX-52), p. 1, ¶ 4 & p. 8	
4		time period from	(Att. 1)).	
5		January 1, 2014 to		
6		October 3, 2018, he		
7		was an owner of		
8		Redwood Scientific		
9		Technologies, Inc.		
10		(Delaware).		
11	27.	Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
12		admits that during	p. 3, ¶ 8 (Sanger Dec.	
13		some or all of the	(PX-52), p. 1, ¶ 4 & p. 8	
14		time period from	(Att. 1)).	
15		January 1, 2014 to		
16		October 3, 2018, he	See also Sands 1 st Dec.	
17		was the President of	(TRO PX-1), Dkt. 7, p.	
18		Redwood Scientific	51-52, ¶ 143 & Dkt. 13-	
19		Technologies, Inc.	1, p. 109 (Att. 165).	
20		(Delaware).		
21			See also Walker Dec.	
22			(PX-32), p. 2, ¶ 9 & p.	
23			150 (Att. 14); p. 167, 175	
24			(Att. 16).	
25	28.	Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
26		admits that during	p. 3, ¶ 9 (Sanger Dec.	
27		some or all of the	(PX-52), p. 1, ¶ 4 & p. 8	
28		time period from	(Att. 1)).	

1	January 1, 2014 to		
2	October 3, 2018, he	See also Sands 1 st Dec.	
3	was the Chief	(TRO PX-1), Dkt. 7, p.	
4	Executive Officer	51-52, ¶ 143 & Dkt. 13-	
5	of Redwood	1, p. 109 (Att. 165).	
6	Scientific		
7	Technologies, Inc.	See also Walker Dec.	
8	(Delaware).	(PX-32), p. 2, ¶ 9 & p.	
9		150 (Att. 14); p. 167, 175	
10		(Att. 16).	
11	29. Jason Cardiff	J. Cardiff 1st RFA Resp,	Admit.
12	admits that during	.p. 3, ¶ 10 (Sanger Dec.	
13	some or all of the	(PX-52), p. 1, ¶ 4 & p. 8	
14	time period from	(Att. 1)).	
15	January 1, 2014 to		
16	October 3, 2018, he	See also Walker Dec.	
17	was a member of	(PX-32), p. 2, ¶ 9 & p.	
18	the Board of	167, 175 (Att. 16).	
19	Directors of		
20	Redwood Scientific		
21	Technologies, Inc.		
22	(Delaware).		
23	30. Jason Cardiff was	Walker Dec. (PX-32), p.	Admit.
24	the Secretary and	2, ¶ 9 & p. 167, 175 (Att.	
25	Treasurer of	16).	
26	Redwood Scientific		
27	Technologies, Inc.		
28	(Delaware).		

31.	Jason Cardiff admits that during some or all of the time period from January 1, 2014 to October 3, 2018, he was, through Carols Place Limited Partnership, an owner of Redwood Scientific Technologies, Inc. (Delaware).	J. Cardiff 1st RFA Resp., p. 5, ¶ 14 (Sanger Dec. (PX-52), p. 1, ¶ 4 & p. 9 (Att. 1)).	Admit.
32.	Jason Cardiff admits that during some or all of the time period from January 1, 2014 to October 3, 2018, he was an owner of Identify, LLC.	J. Cardiff 1st RFA Resp., p. 5, ¶ 18 (Sanger Dec. (PX-52), p. 1, ¶ 4 & p. 9 (Att. 1)).	Admit.
33.	Jason Cardiff admits that during some or all of the time period from January 1, 2014 to October 3, 2018, he was a member of	J. Cardiff 1st RFA Resp., p. 5, ¶ 19 (Sanger Dec. (PX-52), p. 1, ¶ 4 & p. 9 (Att. 1)). See also Walker Dec. (PX-32), p. 3, ¶ 11 & p.	Admit.

1	Identify, LLC.	198-199 (Att. 21) (IRS	
2		document identifying	
3		Jason Cardiff as sole	
4		member of Identify); p.	
5		200-201 (Att. 22)	
6		(registered agent services	
7		agreement identifying	
8		Jason Cardiff as member	
9		of Identify).	
10	34. On March 14, 2014,	Sands 1st Dec. (TRO PX-	Admit.
11	Jason Cardiff	1), Dkt. 7, p. 59, ¶ 164 &	
12	signed an Internal	Dkt. 24-2, p. 10, 11 (Att.	
13	Revenue Service	185).	
14	form as a member		
15	of Runaway	Walker Dec. (PX-32), p.	
16	Products, LLC.	1, ¶ 6 & p. 25-31 (Att. 2).	
17	35. On February 6,	Sands 3rd Dec. (PX-51),	Admit.
18	2014, Jason Cardiff	p. 3, 17, ¶ 9, 51 & p. 44	
19	signed a Media	(Att. 4).	
20	Purchasing Agent		
21	Agreement with		
22	Havas Edge LLC as		
23	VP of Run Away		
24	Products.		
25	36. On March 18, 2014,	Yallen Dec. (PX-40), p. 2	Admit.
26	Jason Cardiff	¶ 9 & p. 8-9 (Att. 1).	
27	signed an		
28	agreement with		

1	Inter/Media Time		
2	Buying Corp. (a/k/a		
3	Inter Media		
4	Advertising) as VP		
5	of Run Away		
6	Products,		
7	LLC/Prolongz.		
8	37. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
9	admits that during	p. 7, ¶ 27 (Sanger Dec.	
10	some or all of the	(PX-52), p. 1, ¶ 4 & p. 10	
11	time period from	(Att. 1)).	
12	January 1, 2014 to		
13	October 3, 2018, he	See also Sands 1 st Dec.	
14	was a Trustee of	(TRO PX-1), Dkt. 7, p.	
15	Carols Place Trust.	61, ¶ 173 & Dkt. 24-9, p.	
16		3 (Att. 196).	
17	38. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
18	admits that during	p. 7, ¶ 28 (Sanger Dec.	
19	some or all of the	(PX-52), p. 1, ¶ 4 & p. 10	
20	time period from	(Att. 1)).	
21	January 1, 2014 to		
22	October 3, 2018, he		
23	was a named		
24	beneficiary of the		
25	Carols Place Trust.		
26	39. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
27	admits that during	p. 7, ¶ 30 (Sanger Dec.	
28	some or all of the	(PX-52), p. 1, ¶ 4 & p. 10	

1	time period from	(Att. 1)).	
2	January 1, 2014 to		
3	October 3, 2018, he		
4	was, through Carols		
5	Place Trust, a		
6	partner of Carols		
7	Place Limited		
8	Partnership.		
9	40. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
10	admits that during	p. 7, ¶ 31 (Sanger Dec.	
11	some or all of the	(PX-52), p. 1, ¶ 4 & p. 10	
12	time period from	(Att. 1)).	
13	January 1, 2014 to		
14	October 3, 2018, he		
15	was, through		
16	Extension First		
17	LLC, an owner of		
18	Carols Place		
19	Limited		
20	Partnership.		
21	41. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
22	admits that during	p. 7, ¶ 32 (Sanger Dec.	
23	some or all of the	(PX-52), p. 1, ¶ 4 & p. 10	
24	time period from	(Att. 1)).	
25	January 1, 2014 to		
26	October 3, 2018, he		
27	was, through		
28	Extension First		

1	LLC, a partner of		
2	Carols Place		
3	Limited		
4	Partnership.		
5	42. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
6	admits that during	p. 8, ¶ 36 (Sanger Dec.	
7	some or all of the	(PX-52), p. 1, ¶ 4 & p. 11	
8	time period from	(Att. 1)).	
9	January 1, 2014 to		
10	October 3, 2018, he	See also George Dec.	
11	had signature	(TRO PX-2), Dkt. 6, p. 2,	
12	authority for bank	¶ 4 & p. 13-14 (Att. A1).	
13	accounts held in the		
14	name of Identify,		
15	LLC.		
16	43. Jason Cardiff	J. Cardiff 1st RFA Resp.,	Admit.
17	admits that during	p. 9, ¶ 40 (Sanger Dec.	
18	some or all of the	(PX-52), p. 1, ¶ 4 & p. 12	
19	time period from	(Att. 1)).	
20	January 1, 2014 to		
21	October 3, 2018, he		
22	had signature		
23	authority for bank		
24	accounts held in the		
25	name of Carols		
26	Place Limited		
27	Partnership.		
28	44. Jason Cardiff	Sands 1st Dec. (TRO PX-	Admit.

1	controls 96.6% of	1), Dkt. 7, p. 52-53, ¶¶	
2	the voting securities	147-148 & Dkt. 13-1, p.	
3	in Redwood	133, 144-145 (Att. 169).	
4	Delaware.		
5	45. Jason Cardiff was	Sands 1st Dec. (TRO PX-	Admit.
6	an owner of	1), Dkt. 7, p. 61, ¶ 173 &	
7	Advanced Men's	Dkt. 24-8, p. 25 – Dkt.	
8	Institute Prolongz.	24-9, p. 1 (Att. 195).	
9			
10		Walker Dec. (PX-32), p.	
11		2, ¶ 9 & p. 185-191 (Att.	
12		17).	
13			
14		Yallen Dec. (PX-40), p.	
15		3, ¶ 13 & p. 99, 121 (Att.	
16		6).	
17	46. Jason Cardiff was	Yallen Dec. (PX-40), p.	Admit.
18	the managing	3, ¶ 13 & p. 99, 103, 122	
19	member and	(Att. 6).	
20	President of		
21	Advanced Men's		
22	Institute Prolongz		
23	LLC.		
24	47. Jason Cardiff is	Sands 1st Dec. (TRO PX-	Admit.
25	named as the Sole	1), Dkt. 7, p. 56-58, ¶ 158	
26	Member of Identify	& Dkt. 24-1, p. 14-15	
27	LLC on the	(Att. 179).	
28	Internal Revenue		

1	Service's letter		
2	assigning Identify		
3	LLC an Employer		
4	Identification		
5	Number.		
6	48. Jason Cardiff held	Sands 1st Dec. (TRO PX-	Admit.
7	himself out as the	1), Dkt. 7, p. 56-58, ¶ 158	
8	manager of	& Dkt. 24, p. 23 (Att.	
9	Identify, LLC.	179).	
10			
11		See also Walker Dec.	
12		(PX-32), p. 3, ¶ 11 & p.	
13		202-230 (Att. 23).	
14	49. Jason Cardiff is the	Sands 1st Dec. (TRO PX-	Admit.
15	President of True	1), Dkt. 7, p. 54, ¶¶ 151,	
16	and Honesty, LLC.	152 & Dkt. 24, p. 4-12	
17		(Att. 172, 173).	
18	50. Jason Cardiff has	Walker Dec. (PX-32), p.	Admit.
19	transacted business	3, ¶ 13 (Jason Cardiff	
20	in the Central	was in the office every	
21	District of	day unless he was	
22	California.	traveling).	
23			
24		Carranza Dec. (PX-33),	
25		p. 1, ¶ 6 (Jason Cardiff	
26		was on the Redwood	
27		premises nearly all the	
28		time).	

	Melendez Dec. (PX-35), p. 1, ¶ 4.	
	Wu Dec. (PX-37), p. 3, ¶ 15 (Jason Cardiff was in the office daily).	
51. Jason Cardiff was a signatory on five Redwood Scientific bank accounts.	George Dec. (TRO PX- 2), Dkt. 6, p. 2, ¶ 4 & p. 13-14 (Att. A1).	Admit.

Eunjung Cardiff

FTC Fact	FTC Citation	Cardiff Admit/Objection
52. Eunjung Cardiff has stated in a sworn declaration that she “was an owner, officer, director and/or member of the business defendants identified as Defendants in [this] action.”	E. Cardiff Dec., Dkt. 265-3, p. 2.	Admit.
53. Eunjung Cardiff was the Chief	Sands 1st Dec. (TRO PX- 1), Dkt. 7, p. 58, ¶ 161 &	Admit.

1	Executive Officer	Dkt. 24-2 p. 6 (Att. 182).	
2	of Advanced Men's		
3	Institute Prolongz	Walker Dec. (PX-32), p.	
4	LLC.	2, ¶ 9 & p. 33 (Att. 4).	
5			
6		Yallen Dec. (PX-40), p.	
7		3, ¶ 13 & p. 75 (Att. 5).	
8	54. Eunjung Cardiff	Yallen Dec. (PX-40), p.	Admit.
9	was the President,	3, ¶ 13 & p. 72 (Att. 4).	
10	Manager, and		
11	managing member	Sands 1st Dec. (TRO PX-	
12	of Run Away	1), Dkt. 7, p. 59, ¶ 164 &	
13	Products, LLC.	Dkt. 24-2, p. 10-12 (Att.	
14		185).	
15			
16		Walker Dec. (PX-32), p.	
17		1, ¶ 6 & p. 25-31 (Att. 2).	
18	55. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
19	admits that during	p. 4, ¶ 19 (Sanger Dec.	
20	some or all of the	(PX-52), p. 1, ¶ 8 & p. 63	
21	time period from	(Att. 5)).	
22	January 1, 2014 to		
23	October 3, 2018,		
24	she was a member		
25	of Run Away		
26	Products, LLC.		
27	56. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
28	admits that during	p. 4, ¶ 20 (Sanger Dec.	

1	some or all of the	(PX-52), p. 1, ¶ 8 & p. 63	
2	time period from	(Att. 5)).	
3	January 1, 2014 to		
4	October 3, 2018,		
5	she was an officer		
6	of Run Away		
7	Products, LLC.		
8	57. Eunjung Cardiff	Walker Dec. (PX-32), p.	Admit.
9	was the organizer of	2, ¶ 9 & p. 32 (Att. 3).	
10	Advanced Men's		
11	Institute Prolongz	Yallen Dec. (PX-40), p.	
12	LLC.	3, ¶ 13 & p. 74 (Att. 5).	
13			
14		Sands 1st Dec. (TRO PX-	
15		1), Dkt. 7, p. 58, ¶ 160 &	
16		Dkt. 24-2 p. 5 (Att. 181).	
17	58. Eunjung Cardiff	Walker Dec. (PX-32), p.	Admit.
18	was the owner of	2, ¶ 9 & p. 35 (Att. 6).	
19	Advanced Men's		
20	Institute Prolongz	Yallen Dec. (PX-40), p.	
21	LLC.	3, ¶ 13 & p. 75 (Att. 5).	
22			
23		Sands 1st Dec. (TRO PX-	
24		1), Dkt. 7, p. 58, ¶ 161 &	
25		Dkt. 24-2 p. 6 (Att. 182).	
26	59. Eunjung Cardiff	Sands 1st Dec. (TRO PX-	Admit.
27	was a member of	1), Dkt. 7, p. 51, ¶ 138 &	
28	Advanced Men's	Dkt. 13, p. 172 (Att.	

1	Institute Prolongz	160).	
2	LLC.		
3	60. Eunjung Cardiff	Sands 1st Dec. (TRO PX-	Admit.
4	was a member of	1), Dkt. 7, p. 51, ¶ 139 &	
5	Redwood Scientific	Dkt. 13, p. 173 (Att.	
6	Technologies, LLC.	161).	
7			
8		Walker Dec. (PX-32), p.	
9		2, ¶ 9 & p. 36 (Att. 7).	
10	61. Eunjung Cardiff	Walker Dec. (PX-32), p.	Admit.
11	changed AMI's	2, ¶ 9 & p. 36 (Att. 7)	
12	name to Redwood	(Eunjung Cardiff signing	
13	Scientific	as member of the limited	
14	Technologies, LLC,	liability company and the	
15	incorporated	incorporator of the	
16	Redwood Scientific	corporation).	
17	Technologies, Inc.,		
18	a California	Yallen Dec. (PX-40), p.	
19	corporation, and	2-3, ¶¶ 6, 13 & p. 77-78	
20	converted Redwood	(Att. 5).	
21	Scientific		
22	Technologies LLC		
23	into the corporation.		
24	62. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
25	admits that during	p. 1, ¶ 1 (Sanger Dec.	
26	some or all of the	(PX-52), p. 1, ¶ 8 & p. 62	
27	time period from	(Att. 5)).	
28	January 1, 2014 to		

1	October 3, 2018,		
2	she was an owner of		
3	Redwood Scientific		
4	Technologies, Inc.		
5	(California).		
6	63. Eunjung Cardiff	Sands 1st Dec. (TRO PX-	Admit.
7	was the Secretary	1), Dk. 7, p. 50-51, ¶¶	
8	and Director of	136-137 & Dkt. 13, p.	
9	Redwood Scientific	169-170 (Atts. 158, 159).	
10	Technologies, Inc.		
11	(California).	Walker Dec. (PX-32), p.	
12		2, ¶ 9 & p. 38-39 (Atts.	
13		9-10).	
14	64. Eunjung Cardiff	Sands 1st Dec. (TRO PX-	Admit.
15	was Chief	1), Dkt. 7, p. 62, ¶ 178 &	
16	Operating Officer	Dkt. 22, p. 24 (Att. 216).	
17	of Redwood		
18	Scientific		
19	Technologies, Inc.		
20	(California).		
21	65. Eunjung Cardiff	Walker Dec. (PX-32), p.	Admit.
22	was the Director of	9, ¶ 37 & p. 593-598	
23	Marketing of	(Att. 59) (biographies of	
24	Redwood Scientific	Eunjung Cardiff on	
25	Technologies, Inc.	redwoodamerica.com and	
26	(California).	redwoodscientific.co).	
27			
28		Morris Dec. (PX-4), Dkt.	

		9, p. 3, ¶ 5 & p. 14, 16 (Att. B).	
66.	Eunjung Cardiff was the Chief Operating Officer, Marketing Director, Corporate Secretary, and a member of the Board of Directors of Redwood Scientific Technologies, Inc. (Nevada).	Sands 1st Dec. (TRO PX- 1), Dkt. 7, p. 51, ¶ 141 & Dkt. 13-1, p. 5 (Att. 163); Dkt. 7, p. 51, ¶ 142 & Dkt. 13-1, p. 7, 58-59 (Att. 164). Adkinson-Connor Dec. (PX-38), p. 2, ¶¶ 7-8 & p. 22-54 (Atts. 3-7) (Eunjung Cardiff signed contracts as COO of Redwood Nevada). Walker Dec. (PX-32), p. 2, ¶ 9 & p. 46 (Att. 12) (Corporate Secretary) & p. 48, 99 (Att. 13) (Director, Marketing Director, and Secretary).	Admit.
67.	Eunjung Cardiff was Chief Operating Officer, Chief Marketing Officer, and a member of the	Sands 1st Dec. (TRO PX- 1), Dkt. 7, p. 52-53 ¶ 147 & Dkt. 13-1, p. 133, 142 (Att. 169). Walker Dec. (PX-32), p.	Admit.

1	Board of Directors	2, ¶ 9 & p. 167, 175 (Att.	
2	of Redwood	16).	
3	Scientific		
4	Technologies, Inc.		
5	(Delaware).		
6	68. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
7	admits that during	p. 5, ¶ 24 (Sanger Dec.	
8	some or all of the	(PX-52), p. 1, ¶ 8 & p. 64	
9	time period from	(Att. 5)).	
10	January 1, 2014 to		
11	October 3, 2018,	See also Sands 1 st Dec.	
12	she was a Trustee of	(TRO PX-1), Dkt. 7, p.	
13	Carols Place Trust.	61, ¶ 173 & Dkt. 24-9, p.	
14		3 (Att. 196).	
15	69. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
16	admits that during	p. 5, ¶ 25 (Sanger Dec.	
17	some or all of the	(PX-52), p. 1, ¶ 8 & p. 64	
18	time period from	(Att. 5)).	
19	January 1, 2014 to		
20	October 3, 2018,		
21	she was a named		
22	beneficiary of		
23	Carols Place Trust.		
24	70. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
25	admits that during	p. 5, ¶ 26 (Sanger Dec.	
26	some or all of the	(PX-52), p. 1, ¶ 8 & p. 64	
27	time period from	(Att. 5)).	
28	January 1, 2014 to		

1	October 3, 2018,		
2	she was, through		
3	Carols Place Trust,		
4	an owner of Carols		
5	Place Limited		
6	Partnership.		
7	71. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
8	admits that During	p. 5, ¶ 28 (Sanger Dec.	
9	some or all of the	(PX-52), p. 1, ¶ 8 & p. 64	
10	time period from	(Att. 5)).	
11	January 1, 2014 to		
12	October 3, 2018,		
13	she was, through		
14	Extension First		
15	LLC, an owner of		
16	Carols Place		
17	Limited		
18	Partnership.		
19	72. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
20	admits that during	p. 5, ¶ 30 (Sanger Dec.	
21	some or all of the	(PX-52), p. 1, ¶ 8 & p. 64	
22	time period from	(Att. 5)).	
23	January 1, 2014 to		
24	October 3, 2018,		
25	she had signature		
26	authority for bank		
27	accounts held in the		
28	name of Redwood		

1	Scientific		
2	Technologies		
3	(California)		
4	73. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
5	admits that during	p. 6, ¶ 34 (Sanger Dec.	
6	some or all of the	(PX-52), p. 1, ¶ 8 & p. 65	
7	time period from	(Att. 5)).	
8	January 1, 2014 to		
9	October 3, 2018,	See also George Dec.	
10	she had signature	(TRO PX-2), Dkt. 6, p. 2,	
11	authority for bank	¶ 4 & p. 13-14 (Att. A1).	
12	accounts held in the		
13	name of Advanced		
14	Men's Institute		
15	Prolongz LLC.		
16	74. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
17	admits that during	p. 6, ¶ 35 (Sanger Dec.	
18	some or all of the	(PX-52), p. 1, ¶ 8 & p. 65	
19	time period from	(Att. 5)).	
20	January 1, 2014 to		
21	October 3, 2018,	See also George Dec.	
22	she had signature	(TRO PX-2), Dkt. 6, p. 2,	
23	authority for bank	¶ 4 & p. 13-14 (Att. A1).	
24	accounts held in the		
25	name of Run Away		
26	Products, LLC.		
27	75. Eunjung Cardiff	E. Cardiff 1st RFA Resp.,	Admit.
28	admits that during	p. 6, ¶ 37 (Sanger Dec.	

1	some or all of the	(PX-52), p. 1, ¶ 9 & p. 65	
2	time period from	(Att. 5)).	
3	January 1, 2014 to		
4	October 3, 2018,		
5	she had signature		
6	authority for bank		
7	accounts held in the		
8	name of Carols		
9	Place Limited		
10	Partnership.		
11	76. Eunjung Cardiff	Sands 1st Dec. (TRO PX-	Admit.
12	signed statements	1), Dkt. 7, p. 62, ¶ 177 &	
13	identifying herself	Dkt. 24-13, p. 1 (Att.	
14	as an owner of	212) (sworn confession	
15	AMI, Redwood	of judgment signed by	
16	Scientific	Eunjung Cardiff, in	
17	Technologies, Inc.	which she identifies	
18	and Identify.	herself as owner of	
19		Redwood Scientific	
20		Technologies, Inc.,	
21		Identify LLC, AMI LLC,	
22		and other entities); p. 62,	
23		¶ 177 & Dkt. 24-13, p. 17	
24		(Att. 214) (Identify	
25		LLC).	
26	77. Jason Cardiff and	Statement of	Admit.
27	Eunjung Cardiff are	Uncontroverted Facts	
28	owners of Carols	(hereafter "SUF") 31, 37-	

1	Place Limited	41, 43, 68-71, 75.	
2	Partnership via their		
3	joint ownership of		
4	Extension First,		
5	LLC and co-		
6	trusteeship of		
7	Carols Place Trust.		
8	78. Eunjung Cardiff	George Dec. (TRO PX-	Admit.
9	was a signatory on a	2), Dkt. 6, p. 1, ¶ 4 &	
10	People [United] for	(Att. A1), p. 13 (Att. A1).	
11	Christians, Inc.		
12	bank account.		
13	79. Eunjung Cardiff has	Walker Dec. (PX-32), p.	Admit.
14	transacted business	3, ¶ 13 (Eunjung Cardiff	
15	in the Central	was in the office several	
16	District of	times each week and also	
17	California.	worked from home).	
18			
19		Melendez Dec. (PX-35),	
20		p. 1, ¶ 4 (Eunjung Cardiff	
21		was in the Redwood	
22		office every week).	
23			
24		Carranza Dec. (PX-33),	
25		p. 1, ¶ 6 (Eunjung Cardiff	
26		was on the Redwood	
27		premises every week).	
28			

	<p>Wu Dec. (PX-37), p. 3, ¶ 15 (Eunjung Cardiff was usually in the office several time per week).</p> <p>Rodoracio Dec. (PX-36), p. 5 ¶ 21 (Eunjung Cardiff was in the office weekly).</p>	
<p>80. Eunjung Cardiff previously worked for approximately five years as a marketing executive at Cannella Response Television, a media placement agency.</p>	<p>Contempt Hearing Transcript, Dkt. 187-1, p. 277, ln. 17 – p. 278, ln. 5.</p> <p>See also, Adkinson-Connor Dec. (PX-38), p. 2, ¶ 9.</p>	<p>Admit</p>
<p>81. During her years at Cannella Response Television, Eunjung Cardiff grew the business from \$0 to nearly \$3 million per year.</p>	<p>Contempt Hearing Transcript, Dkt. 187-1, p. 277, ln. 17 – p. 278, ln. 5.</p>	<p>Deny. Ex. B, Eunjung Cardiff Declaration ¶¶6, 32, 37.</p>
<p>FTC Response to SUF 81: While denying this fact, the defendants do not specifically dispute it either. The cited paragraph that addresses Eunjung Cardiff’s time at Cannella (¶ 6) does not dispute SUF 81 and an uncited</p>		

paragraph from her declaration (¶ 7) also seems to support it. Two of the three cited paragraphs from Eunjung Cardiff's declaration (¶¶ 32, 37) do not address her years at Cannella and therefore have no bearing on this fact. The FTC's evidentiary citation is to Eunjung Cardiff's sworn contempt hearing testimony on July 30, 2019.

B. Jason and Eunjung Cardiff Were Each Directly Involved in the Wrongful Conduct

FTC Fact	FTC Citation	Cardiff Admit/Objection
82. Jason Cardiff had final approval of all Redwood product advertising (online, video, and print).	Sherrell Dec. (PX-43), p. 2, ¶ 6. Wu Dec. (PX-37), p. 3, ¶ 14. Walker Dec. (PX-32), p. 6, ¶ 23 (final approval of Facebook ads).	Admit.
83. Redwood's websites were created at Jason Cardiff's direction and approved by him before going live.	Walker Dec. (PX-32), p. 6, ¶ 23.	Admit.
84. Jason Cardiff wrote content for	Walker Dec. (PX-32), p. 6, ¶ 23.	Object as to timeframe and irrelevant. After

1	Facebook ads and		February, 2018, all
2	directed Redwood		outside marketing and
3	staff and outside		advertising was
4	contractors to		discontinued by
5	create TBX-FREE		Redwood and the
6	advertising for		Cardiffs. Ex. A, Jason
7	placement on		Cardiff Declaration ¶¶7,
8	Facebook, which		9, and 50. Prior to that
9	he approved.		time, Admit.
10	85. Jason Cardiff	Walker Dec. (PX-32), p.	
11	directed Redwood	9, ¶ 39.	
12	staff and outside		
13	contractors to		
14	create TBX-FREE		
15	advertising for		
16	placement on		
17	Facebook, which		
18	he then approved.		
19	86. Jason Cardiff	Sands 1st Dec. (TRO PX-	
20	appeared in	1), Dkt. 7, p. 4, ¶ 7 &	
21	Facebook Live	Dkt. 7, p. 240-254 (Atts.	
22	videos for TBX-	009-11).	
23	FREE.		
24		Sands 1 st Dec. (TRO PX-	
25		1), Dkt. 7, p. 4, ¶ 8 &	
26		Dkt. 7, p. 255-267 (Att.	
27		012-014).	
28			

	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 4, ¶ 9 & Dkt. 7, p. 268-282 (Atts. 015-017).</p> <p>Walker Dec. (PX-32), p. 6, ¶ 22; p. 9-10, ¶ 39 (recognizing Jason Cardiff in PX-1, Atts. 9, 12, and 15).</p>	
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FTC Response to SUF 84-86: The Cardiffs do not dispute that, prior to February 2018, Jason Cardiff wrote and approved content for Facebook ads and directed Redwood staff and outside contractors to create TBX-FREE advertising, directed Redwood staff and outside contractors to create TBX-FREE advertising for placement on Facebook, and appeared in Facebook Live videos for TBX-FREE. The Complaint challenges the Cardiffs’ conduct from at least 2014 through the date of the Complaint. See Dkt. 1, p. 15, ¶ 36.

These facts are relevant to Jason Cardiff’s individual liability for injunctive and monetary relief.

Their claim that “[a]fter February, 2018, all outside marketing and advertising was discontinued by Redwood and the Cardiffs” does not dispute that Jason Cardiff participated in and directed placing ads on Facebook.

Furthermore, the Cardiffs did not cease marketing TBX-FREE, Eupepsia Thin, and Prolongz in February 2018. See SUF 938. The Commission has added this fact in response to this oft-repeated assertion in the Cardiffs’ DSGD.

1	87. Jason Cardiff	J. Cardiff 3rd RFA Resp.,	Object as to lack of timeframe and irrelevant, Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Declaration of Jason Cardiff ¶¶7, 9, and 46-53. Therefore denied after that date. At times prior to February, 2018, Defendants provided input as to where and when advertising would run.
2	admits that he	p. 7,	
3	reviewed and	¶ 140 (Sanger Dec. (PX-	
4	approved	52), p. 1, ¶ 6 & p. 30	
5	advertisements for	(Att. 3)).	
6	TBX-FREE. ³		
7	88. Eunjung Cardiff	E. Cardiff 3rd RFA	
8	admits that she	Resp., p. 6,	
9	reviewed and	¶ 134 (Sanger Dec. (PX-	
10	approved	52), p. 2, ¶ 10 & p. 98	
11	advertisements for	(Att. 7)).	
12	TBX-FREE.		
13	89. Jason Cardiff	J. Cardiff 3rd RFA Resp.,	
14	admits that he	p. 3, ¶ 117 (Sanger Dec.	
15	participated in	(PX-52), p. 1, ¶ 6 & p. 26	
16	deciding how	(Att. 3)).	
17	media time would		
18	be used to	See also Adkinson-	
19	advertise TBX-	Connor Dec. (PX-38), p.	
20	FREE.	8, ¶ 31; p. 11, ¶¶ 47-49 &	
21		p. 767-773 (Att. 23-24).	
22	90. Eunjung Cardiff	E. Cardiff 3rd RFA	
23	admits that she	Resp., p. 2,	
24	participated in	¶ 111 (Sanger Dec. (PX-	

³ The Cardiffs submitted a single objection to SUF 87-98; the FTC's response begins on p. 45.

1	deciding how	52), p. 2, ¶ 10 & p. 77	
2	media time would	(Att. 7)).	
3	be used to		
4	advertise TBX-	See also Adkinson-	
5	FREE.	Connor Dec. (PX-38), p.	
6		8, ¶ 31; p. 11-12, ¶¶ 47-	
7		51 & p. 774-784 (Att. 25-	
8		29).	
9	91. Jason Cardiff	J. Cardiff 3rd RFA Resp.,	
10	admits that he	p. 15, ¶¶ 185, 186	
11	reviewed and	(Sanger Dec. (PX-52), p.	
12	approved	1, ¶ 6 & p. 38 (Att. 3)).	
13	advertisements for		
14	Eupepsia Thin.		
15	92. Eunjung Cardiff	E. Cardiff 3rd RFA	
16	admits that she	Resp., p. 12-13, ¶¶ 179,	
17	reviewed and	180 (Sanger Dec. (PX-	
18	approved	52), p. 2, ¶ 10 & p. 87-88	
19	advertisements for	(Att. 7)).	
20	Eupepsia Thin.		
21	93. Jason Cardiff	J. Cardiff 3rd RFA Resp.,	
22	admits that he	p. 10, ¶ 161 (Sanger Dec.	
23	participated in	(PX-52), p. 1, ¶ 6 & p. 33	
24	deciding how	(Att. 3)).	
25	media time would		
26	be used to	See also Adkinson-	
27	advertise Eupepsia	Connor Dec. (PX-38), p.	
28	Thin.	8, ¶ 31; p. 11, ¶¶ 47-49.	

1	94. Eunjung Cardiff	E. Cardiff 3rd RFA
2	admits that she	Resp., p. 9,
3	participated in	¶ 155 (Sanger Dec. (PX-
4	deciding how	52), p. 2, ¶ 10 & p. 84,
5	media time would	(Att. 7)).
6	be used to	
7	advertise Eupepsia	See also Adkinson-
8	Thin.	Connor Dec. (PX-38), p.
9		8, ¶ 31; p. 11-12, ¶¶ 47-
10		51 & p. 762-766 (Att. 22)
11		& p. 774-784 (Att. 25-
12		29).
13	95. Jason Cardiff	J. Cardiff 3rd RFA Resp.,
14	admits that he	p. 24, ¶¶ 241, 242
15	reviewed and	(Sanger Dec. (PX-52), p.
16	approved	1, ¶ 6, & p. 47 (Att. 3)).
17	advertisements for	
18	Prolongz.	
19	96. Eunjung Cardiff	E. Cardiff 3rd RFA
20	admits that she	Resp., p. 20, ¶¶ 235, 236
21	both reviewed and	(Sanger Dec. (PX-52), p.
22	approved	2, ¶ 10 & p. 95 (Att. 7)).
23	advertisements for	
24	Prolongz.	
25	97. Jason Cardiff	J. Cardiff 3rd RFA Resp.,
26	admits that he	p. 21, ¶ 222 (Sanger Dec.
27	participated in	(PX-52), p. 1, ¶ 6 & p. 44
28	deciding how	(Att. 3)).

1 2 3 4 5	media time would be used to advertise Prolongz.	See also Adkinson- Connor Dec. (PX-38), p. 8, ¶ 31; p. 11, ¶¶ 47-49 & p. 767-768 (Att. 23).
6 7 8 9 10 11 12 13 14	98. Eunjung Cardiff admits that she participated in deciding how media time would be used to advertise Prolongz.	E. Cardiff 3rd RFA Resp., p. 17, ¶ 216 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 92 (Att. 7)). See also Adkinson- Connor Dec. (PX-38), p. 8, ¶ 31; p. 11-12, ¶¶ 47- 50.
15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>FTC Response to SUF 87-98: The FTC’s evidentiary citations are to the Cardiffs’ sworn responses to the FTC’s requests for admissions. The Cardiffs cannot now create a genuine dispute of material fact by contradicting their earlier sworn admissions with no explanation or supporting documentation.</p> <p>The Cardiffs do not dispute this group of facts pre-February 2018. The Complaint challenges the Cardiffs’ conduct from at least 2014 through the date of the Complaint. See Dkt. 1, p. 15, ¶ 36.</p> <p>Furthermore, the Cardiffs did not cease marketing TBX-FREE, Eupepsia Thin, and Prolongz in February 2018. See SUF 938.</p> <p>These facts are relevant to Jason Cardiff and Eunjung Cardiff’s individual liability for injunctive and monetary relief.</p>	

1	99. On behalf of Run	Szymanski Dec. (PX-39),	Admit
2	Away Products,	p. 3, ¶ 11	
3	Inter/Media		
4	purchased media	See also Yallen Dec.	
5	time for Prolongz	(PX-40), p. 2, ¶ 8-9.	
6	long form		
7	advertising on TV		
8	networks across		
9	the United States		
10	from late 2013		
11	through September		
12	2014, first for a test		
13	period and then		
14	under contract.		
15	100. Jason Cardiff and	Szymanski Dec. (PX-39),	Admit
16	Eunjung Cardiff	p. 3, ¶ 12.	
17	contacted		
18	Inter/Media about		
19	buying media time		
20	for Prolongz in late		
21	2013.		
22	101. The Cardiffs gave	Szymanski Dec. (PX-39),	Admit
23	Inter/Media a	p. 3 ¶ 13 & p. 7 (Att. 1).	
24	written		
25	presentation about		
26	Prolongz.		
27	102. On behalf of Run	Yallen Dec. (PX-40), p.	Admit
28	Away Products,	2, ¶ 9 & p. 8-9 (Att. 1).	

1 2 3 4 5 6 7 8	LLC/Prolongz, Jason Cardiff negotiated and signed an Insertion Order for Prolongz advertising with Inter/Media on March 18, 2014.	Szymanski Dec. (PX-39), p. 3, ¶ 15 & p. 61-67 (Att. 9).	
9 10 11 12 13 14 15 16 17 18 19	103. The Insertion Order provided that Jason Cardiff or Eunjung Cardiff had to approve media schedules for Prolongz advertising. ⁴	Szymanski Dec. (PX-39), p. 3, ¶ 15 & p. 61 (Att. 9). See also Yallen Dec. (PX-40), p. 3-4, ¶ 14(a) & p. 137 (Att. 7) (court finding that Jason Cardiff authorized and approved each airing of a Prolongz ad in 2014)	Object as to relevance and lack of timeframe, Defendants stopped its marketing campaigns in or about February, 2018. Ex. A, Declaration of Jason Cardiff ¶¶7, 9 and 46-53. Therefore denied after that date. At times prior to February, 2018,
20 21 22 23 24	104. Inter/Media would offer media buying opportunities to Jason Cardiff and Eunjung Cardiff	Szymanski Dec. (PX-39), p. 3, ¶ 11.	Defendants provided input as to where and when advertising would run.

⁴ The Cardiffs submitted a single objection to SUF 103-110; the FTC's response begins on p. 50.

1	and they decided		
2	where and when		
3	Prolongz		
4	advertising would		
5	run.		
6	105. Jason Cardiff and	Szymanski Dec. (PX-39),	
7	Eunjung Cardiff	p. 3, 5, ¶¶ 11, 14, 22 & p	
8	approved media	44-60 (Att. 2-8).	
9	schedules and		
10	budgets for Run		
11	Away Products’		
12	advertising of		
13	Prolongz.		
14	106. Jason and Eunjung	Szymanski Dec. (PX-39),	
15	Cardiff decided	p. 3, ¶ 11; p. 5, ¶ 22.	
16	where and when		
17	the Prolongz		
18	advertising for		
19	which Inter/Media		
20	purchased media		
21	time would run.		
22	107. Jason and Eunjung	Szymanski Dec. (PX-39),	
23	Cardiff closely	p. 5, ¶¶ 22 & p. 69-115	
24	monitored	(Att. 10); p. 221-23 (Att.	
25	Inter/Media’s work	14-15); p. 260-68 (Att.	
26	on the Prolongz	17-21).	
27	account.		
28	108. Jason and Eunjung	Szymanski Dec. (PX-39),	

1	Cardiff approved	p. 3, ¶ 14 & p. 44-60	
2	all long form	(Att. 2-8).	
3	advertising		
4	schedules and		
5	budgets during the		
6	test period.		
7	109. Jason Cardiff	Szymanski Dec. (PX-39),	
8	approved the	p. 5, ¶ 22 & p. 68, 73-75	
9	television	(Att. 10).	
10	programming		
11	descriptors for		
12	Prolongz		
13	advertising for		
14	which Inter/Media		
15	purchased media		
16	time.		
17	110. Jason Cardiff	Szymanski Dec. (PX-39),	
18	approved the	p. 5, ¶ 22 & p. 70-75	
19	television guide	(Att. 10).	
20	title “Hard Core		
21	Sex” and the guide		
22	description		
23	“Secrets to having		
24	longer lasting sex”		
25	for Prolongz for		
26	which Inter/Media		
27	purchased media		
28	time.		

FTC Response to SUF 103-110: The Cardiffs do not dispute that Inter/Media ran Prolongz advertising from late 2013 through September 2014 (see SUF 99, supra).

The Cardiffs do not dispute this group of facts pre-February 2018. The relevant period is 2013-2014, so the Cardiffs have failed to raise a genuine issue of fact for SUF 103-110.

Further, most of the Cardiffs' citations to Jason Cardiff's declaration are to paragraphs that do not even mention Prolongz (¶¶ 7, 46-50, 53) and therefore do not bear on these facts. The remaining citations (¶¶ 9, 51-52) pertain to the Cardiffs' control over the content of one of the Prolongz websites, not the tv ads and the Cardiffs' involvement in the tv ad campaigns discussed in SUF 103-110.

These facts are relevant to Jason Cardiff and Eunjung Cardiff's individual liability for injunctive and monetary relief.

111. Run Away paid Inter/Media's invoices for placement of Prolongz advertising using an HSBC account belonging to AMI.	Walker Dec. (PX-32), p. 7, ¶ 27. See also Szymanski Dec. (PX-39), p. 5, ¶ 23 (July 2014 check was written on an HSBC account in the name of AMI).	Object as to lack of timeframe. It is unclear for what time period Plaintiff believes Run Away paid Inter/Media for Prolongz.
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FTC Response to SUF 111: The Cardiffs do not dispute that Defendant Run Away paid Inter/Media using a bank account in the name of Defendant AMI. The FTC's evidentiary citation specifies that one such check was written in July

2014. The Cardiffs do not dispute that the time period of Inter/Media's business relationship with Defendants was late 2013 through September 2014 (see SUF 99, *supra*).

112. Eunjung Cardiff signed checks on that account to pay for media for Prolongz.	Walker Dec. (PX-32), p. 7, ¶ 27. See also Szymanski Dec. (PX-39), p. 5, ¶ 23 (Eunjung Cardiff signed a check on an HSBC account in the name of AMI in July 2014). See also Yallen Dec. (PX-40), p. 3, ¶ 11 (Eunjung Cardiff approved payments to Inter/Media in the summer and fall of 2014).	Object as to lack of timeframe. It is unclear as to when or for how long the FTC is claiming Eunjung Cardiff signed checks on the account to pay for media for Prolongz, or for how many of the checks she purportedly signed.
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FTC Response to SUF 112: The Cardiffs do not dispute that Eunjung Cardiff signed checks from a bank account in the name of Defendant AMI to pay for Prolongz media. The FTC's evidentiary citation specifies that one such check was written in July 2014. The Cardiffs do not dispute that the time period of Inter/Media's business relationship with Defendants was late 2013 through September 2014 (see SUF 99, *supra*).

113. After a check written on AMI's	Szymanski Dec. (PX-39), p. 5, ¶ 23.	Admit.
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1	HSBC account		
2	bounced,		
3	Inter/Media		
4	continued to buy		
5	long form time for		
6	Prolongz based on		
7	Jason Cardiff's		
8	assurances of		
9	payment.		
10	114. Jason Cardiff	Sherrell Dec. (PX-43), p.	
11	oversaw the	2, ¶ 6.	
12	drafting of		Object as to lack of
13	television	See also Walker Dec.	timeframe and relevance,
14	commercial scripts	(PX-32), p. 6, ¶ 23 (Jason	Defendants stopped its
15	for TBX-FREE,	Cardiff would collaborate	marketing campaigns in
16	Eupepsia Thin, and	with Redwood	or about February, 2018.
17	Prolongz.	employees and outside	Dkt. 429-1 PX 38 at 101-
18		contractors to create	102; Ex. A, Declaration
19		advertising for television	of Jason Cardiff ¶¶ 7, 9,
20		and the Internet).	and 46-53. Therefore
21	115. Jason Cardiff would	Sherrell Dec. (PX-43), p.	denied after that date. At
22	instruct a	2, ¶ 6.	times prior to February,
23	contractor who had		2018, Defendants
24	been hired by FX		provided input as to
25	Web Media, LLC		where and when
26	(a media and web		advertising would run.
27	services company)		
28	to reference		

1	Redwood's	
2	websites for claims	
3	to be included in	
4	television	
5	advertisements.	
6	116. Jason Cardiff would	Sherrell Dec. (PX-43), p.
7	also dictate specific	2, ¶ 6.
8	advertising claims	
9	to the contractor.	See also Wu Dec. (PX-
10		37), p. 1, ¶ 7 (Jason
11		Cardiff would dictate
12		advertising ideas to her).

FTC Response to SUF 114-116: The Cardiffs do not dispute these facts concerning Jason Cardiff's actions pre-February 2018. The Complaint challenges the Cardiffs' conduct from at least 2014 through the date of the Complaint. See Dkt. 1, p. 15, ¶ 36.

The Cardiffs do not refute the sworn declarations of two former Redwood employees and a third party contractor who detailed Jason Cardiff's control over drafting advertising claims.

The Cardiffs' claim that they stopped marketing "in or about February, 2018" does not dispute that Jason Cardiff controlled and participated in the development of tv advertising claims for all three challenged products. Furthermore, the Cardiffs did not cease marketing TBX-FREE, Eupepsia Thin, and Prolongz in February 2018. See SUF 938.

SUF 114-116 are relevant to Jason Cardiff's individual liability for injunctive

and monetary relief.

117. Jason Cardiff rejected the wording of certain advertising claims and replaced it with his own wording.

Sherrell Dec. (PX-43), p. 2, ¶ 6.

Defendant objects to this statement as it is non-specific, fails to identify the “certain advertising claims” and is therefore vague, ambiguous, overly broad and irrelevant. Object as to lack of timeframe and relevance, Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Declaration of Jason Cardiff ¶¶ 7, 9, and 46-53. Therefore denied after that date. At times prior to February, 2018, Defendants provided input as to where and when advertising would run.

FTC Response to SUF 117: The Cardiffs do not dispute this fact pre-February 2018, and do not refute the sworn declaration of a third party contractor that Jason Cardiff controlled the precise wording of advertising claims.

This fact shows Jason Cardiff’s control over advertising claims and authority to

change specific wording he did not like. SUF 117 is relevant to his individual liability for injunctive and monetary relief.

118. When scripts were complete, FX Web Media's CEO, Ty Sherrell, would send them to Jason Cardiff for approval.	Sherrell Dec. (PX-43), p. 2, ¶ 6.	Object as to lack of timeframe, Defendants stopped its marketing campaigns in or about February, 2018. Ex. A, Jason Cardiff Declaration ¶¶7, 9, and 46-53.
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119. Jason Cardiff would sometimes instruct Ty Sherrell to make additional changes to the scripts, which would then be sent back to Jason Cardiff for final approval.	Sherrell Dec. (PX-43), p. 2, ¶ 6.	Therefore denied after that date. This fact provides no timeframe for when the FTC believes that Defendants approved claims for its products. Admit insofar as Defendant did review and approve the final product each advertising agency produced.
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FTC Response to SUF 118-119: The Cardiffs admit that they “review[ed] and approve[d] the final product each advertising agency produced” and do not dispute this fact post-February 2018. They do not refute the sworn declaration of Ty Sherrell that Jason Cardiff had editing and approval authority over tv advertising scripts.

The period identified in the cited declaration of Ty Sherrell, which the Cardiffs

do not dispute, is 2013 through 2018. Dkt. 432-3, p. 3, ¶ 4.

120. Jason Cardiff had final approval over which of the testimonialists recruited by talent company Icon Studios Dallas would appear in Redwood television advertising.	Sherrell Dec. (PX-43), p. 3, ¶ 8.	Deny. Jason Cardiff did not “approve” testimonialists. Cardiff instructed Sherrill to locate individuals who took the products and were willing to provide a testimonial. Ex. A, Jason Cardiff Declaration ¶¶91- 94. Deny. The Cardiffs ensured that the testimonials were real and from the person who said them. The Cardiffs had each testimonialist sign a form that indicated that what they were saying was true and based off their own personal experience with the product. Ex. A, Jason Cardiff Declaration ¶¶91- 94. The form said: All of the statements made are true and accurate, all of my on-screen
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		representation, of the product [product], are of my own true story. <i>Id.</i> Jason Cardiff had never heard of the talent agency Icon Studios Dallas. He never interacted with anyone from there and was not aware of any their representation of testimonialists. This was something orchestrated by Ty Sherrill. <i>Id.</i>
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FTC Response to SUF 120: Despite his self-serving claim refuting the sworn declaration of Ty Sherrell, Jason Cardiff knew that the testimonialists had not used Eupepsia Thin to lose the weight they discussed in the infomercial. See Dkt. 434-1, p. 39-40 (Att. 3) (Ty Sherrell emails Jason Cardiff on February 1, 2017 that “[I] am working on getting testimonials from people who have already lost weight and I’m getting before pictures for them . . . they will still have the product and do the testimonials but ill [sic] have before pictures from their past fat lives lol [.] this is what you pay me for uncle jason, to use my [expletive deleted] brain”; Jason Cardiff replies “Love it big time[.] Ty you are great.”).

The Cardiffs’ claim that they instructed Ty Sherrell to “locate individuals who took the products” is further undermined by the fact that the infomercial was filmed (February 2017, see Dkts. 433-1, 433-2, 433-3) before Redwood starting selling Eupepsia Thin. See Dkt. 424-1, p. 13, ¶ 52.

121. Jason Cardiff	Sherrell Dec. (PX-43), p.	Deny. Jason Cardiff did
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1	instructed Ty	3, ¶ 8.	not “instruct” Ty Sherrell
2	Sherrell about what		about what to tell the
3	to tell the		testimonials to say in
4	testimonialists to		Redwood’s television
5	say in Redwood’s		advertising. Cardiff
6	television		instructed Sherrill to
7	advertising.		locate indigicuals who
8			took the products and
9			were willing to provide a
10			testimonial. Ex. A, Jason
11			Cardiff Declaration ¶¶91-
12			94.
13			Deny. The Cardiffs
14			ensured that the
15			testimonials were real
16			and from the person who
17			said them. The Cardiffs
18			had each testimonialist
19			sign a form that indicated
20			that what they were
21			saying was true and
22			based off their own
23			personal experience with
24			the product. Ex. A, Jason
25			Cardiff Declaration ¶¶91-
26			94. The form said: All of
27			the statements made are
28			true and accurate, all of

		my on-screen representation, of the product [product], are of my own true story. <i>Id.</i>
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FTC Response to SUF 121: The Cardiffs do not dispute the sworn declarations of three testimonialists who said they did not use Eupepsia Thin to lose the weight they talked about in the ads. (See also SUF 762, *infra.*) Instead, the Cardiffs claim that they “ensured that the testimonials were real” by requiring testimonialists to sign a form stating that all of the statements they made on camera were true. As set forth in the FTC’s Response to SUF 120, Jason Cardiff knew that Ty Sherrell was looking for testimonialists who had previously lost weight without using Eupepsia Thin.

122. Jason Cardiff supervised the design of the Eupepsia Thin product packaging.	Wu Dec. (PX-37), p. 2, ¶ 8 & p. 5-6 (Att. 1).	Object as to vague. The word supervise is undefined and could encompass a wide variety of actions. Object as to lack of timeframe. Defendants stopped its marketing campaigns in or about February, 2018. Ex. A, Declaration of Jason Cardiff ¶¶7, 9, and 46-53. This fact provides no timeframe for when the FTC believes that Defendants designed
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		packaging for Eupepsia Thin.
<p>FTC Response to SUF 122: The cited sworn declaration of former Redwood employee Jean Wu states that she worked for Redwood from April 2016-April 2017, which the Cardiffs do not dispute. Their claim that they do not know the meaning of the word “supervise” is not a serious objection. Jason Cardiff does not describe which actions he did or did not take vis-à-vis Eupepsia Thin packaging development, and the Cardiffs do not offer any specific facts to dispute that Jason Cardiff supervised Ms. Wu’s design of the Eupepsia Thin packaging.</p>		
<p>123. In connection with the contract between Run Away and Inter/Media for Prolongz advertising, Jason Cardiff staked his personal assets as guarantor.</p>	<p>Yallen Dec. (PX-40), p. 2-3, ¶ 10, p. 5-6, ¶ 16(E) & p. 15-30 (Att. 2); p. 141 (Att. 8).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 61, ¶ 174 & Dkt. 24-9, p. 28 – Dkt. 24-10, p. 14 (Att. 200).</p>	<p>Admit</p>
<p>124. Jason Cardiff controlled the telemarketing campaigns that delivered ringless voicemail messages to more than 1.5 million</p>	<p>Walker Dec. (PX-32), p.19, ¶¶ 82-83 (Jason Cardiff negotiated the contract with Gawk, communicated directly with Gawk’s CEO about how he wanted the ringless voicemails</p>	<p>Object as to lack of timeframe and relevance. Defendants stopped its marketing campaigns in or about February, 2018. Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and 46-53</p>

1	consumers.	implemented, and	
2		received reports about the	
3		ringless voicemail	
4		campaign) & p. 900-920	
5		(Atts. 136-138)..	
6			
7		Sands 1st Dec. (TRO	
8		PX-1), Dkt. 7, p. 36-37, ¶	
9		108 & Dkt. 13, p. 49-52	
10		(Att. 119).	
11			
12		Sands 1st Dec. (TRO PX-	
13		1), Dkt. 7, p. 38, ¶¶ 111,	
14		112 & Dkt. 13, p. 59-65,	
15		72-77 (Atts. 123, 124,	
16		127, 128).	
17	125. Jason Cardiff and	J. Cardiff 2nd RFA	
18	Eunjung Cardiff	Resp., p. 12-13, ¶¶ 101,	
19	admit that Jason	103 (Sanger Dec. (PX-	
20	Cardiff's voice is	52), p. 1, ¶ 5 & p. 19-20	
21	heard in two	(Att. 2)).	
22	recorded messages		
23	promoting male	E. Cardiff 2nd RFA	
24	sexual	Resp., p. 11-12, ¶¶ 95, 97	
25	enhancement	(Sanger Dec. (PX-52), p.	
26	products.	2, ¶ 9 & p. 71-72 (Att.	
27		6)).	
28			

	<p>See also Walker Dec. (PX-32), p. 6, ¶ 22; p. 19, ¶ 85 (recognizing Jason Cardiff's voice).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 38, ¶¶ 111, 112 & Dkt. 13, p. 59-65, 72-77 (Atts. 123, 124, 127, 128).</p>	
<p>126. Jason Cardiff's two recorded messages promoting male sexual enhancement products were delivered to consumers' voicemail boxes.</p>	<p>Walker Dec. (PX-32), p. 6, ¶ 22; p. 19, ¶¶ 83, 85.</p>	
<p>FTC Response to SUF 124-126: The Cardiffs' objection fails to raise a genuine dispute of fact. The Cardiffs admit that they used Gawk to deliver 1.5 million ringless voicemails and that Jason Cardiff negotiated the contract (Dkt. 491-1, p. 36; SUF 856-859). They do not dispute his control over the campaigns or that his voice is heard in two recorded messages that were delivered to consumers' voicemail boxes. The timeframe is the timeframe stated in the Complaint. The evidence accompanying SUF 124-126 shows that the Gawk contract was negotiated in February 2018 (Dkt. 427-1, p. 131-132); the Cardiffs admitted that they ran the ringless voicemails through July 2018 (Dkt. 441-1, p. 6, ¶ 22).</p>		

The Cardiffs' assertion that they stopped advertising in February 2018 is false and contradicted by the evidence, including the Cardiffs' admission that they ran ringless voicemails through July 2018. See also SUF 938.

Jason Cardiff's participation in and control over the ringless voicemail campaigns is relevant to his individual liability for injunctive and monetary relief.

127. Jason Cardiff created the Rengalife program, and appeared in many videos touting its earnings claims.	Walker Dec. (PX-32), p. 6, ¶ 22; p. 20, ¶¶ 89-90, 92 (identifying Jason Cardiff as appearing in videos identified as PX-1, Atts. 143, 146, and 149 and videos identified as "Rengalife -- Facebook - 03.21.2018," "Rengalife - Facebook - 03.26.2018," "Rengalife - Facebook - 03.28.2018," and "Rengalife -- Facebook - 04.25.2018"). Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 49-50, ¶¶ 130-132 & Dkt. 13, p. 103-110, 113-132, 134-	Object, not a material fact. Regnalife was never an active company. It was supposed to be a program. Ex. A, Jason Cardiff Declaration ¶¶84-86. Rengalife was a program that lasted and was advertised for about 45 days. Rengalife was started the end of march and we stopped advertising and the program itself at the beginning of May. Ex. A, Jason Cardiff Declaration ¶¶84-86. No consumers acquired any membership from
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	144 (Atts. 143, 144, 146, 147, 149-151).	Rengalife. Ex. A, Jason Cardiff Declaration ¶¶84-86. Rengalife was created in order to create a big word of mouth network to help advertise the products of Redwood because we had stopped television marketing and modified our websites drastically. Ex. A, Jason Cardiff Declaration ¶¶84-86.
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FTC Response to SUF 127: The Cardiffs do not dispute that Jason Cardiff created the Rengalife program or that he appeared in many videos touting its earning claims.

The Cardiffs’ additional narrative contains self-serving claims that do not bear on this fact and should be disregarded.

Jason Cardiff’s participation in the founding of Rengalife and dissemination of its earnings claims is material to his individual liability for injunctive and monetary relief.

128. Jason Cardiff controlled the auto-ship continuity programs that processed	Walker Dec. (PX-32), p. 3, ¶ 13; p. 14, ¶ 64. See Melendez Dec. (PX-35), p. 7, ¶ 26 (told Jason	Object as to the word “control.” It is vague and does not describe the types of responsibilities Cardiff or anyone else in
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unauthorized payments on consumers' credit and debit cards.	Cardiff that many customers said they had not signed up for auto-ship and were upset that they had been put on auto-ship plan anyway, but he did not want to move away from auto-ship orders)	Redwood had. Deny. The autoship program was controlled by the customer service agents who spoke with consumers during its sales calls. Ex. A, Jason Cardiff Declaration ¶¶96-97.
<p>FTC Response to SUF 128: Defendant's blanket and non-specific denial of his control of customer service employees in their placement of customers into unauthorized autoship programs is directly contradicted by very specific testimony by former employees who took his directions. Those former employees rely on specific documents including emails from Defendant Jason Cardiff instructing their actions. Jason Cardiff's claim that he does not understand the word "control" is not a serious objection, and his own use of the word in the same objection belies his claimed confusion about its meaning.</p>		
129. Jason Cardiff signed an Attestation of Outside Legal Review for Redwood in March 2016 in which he affirmed to payment processor Vantiv that the company was in	Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 79-82 (Atts. 25-26).	Admit

1	compliance with all		
2	applicable federal		
3	laws, including the		
4	FTC Act and the		
5	Restore Online		
6	Shoppers’		
7	Confidence Act.		
8	130. In August 2016,	Sands 1st Dec. (TRO PX-	Admit
9	Jason Cardiff, as	1), Dkt. 7, p. 62, ¶ 176 &	
10	President of	Dkt. 24-11, p. 15 – Dkt.	
11	Redwood Scientific	24-12, p. 6 (Att. 207).	
12	Technologies, Inc.,		
13	signed a Merchant	Walker Dec. (PX-32), p.	
14	Agreement with	18, ¶ 80 & p. 753, 762	
15	Electronic	(Att. 126).	
16	Merchant Systems		
17	that included a		
18	checklist of statutes		
19	and regulations		
20	with which		
21	Redwood was		
22	required to comply,		
23	including Sections		
24	5 and 12 of the		
25	Federal Trade		
26	Commission Act,		
27	the Telemarketing		
28	and Consumer		

1	Fraud and Abuse		
2	Prevention Act, the		
3	Telemarketing		
4	Sales Rule, the		
5	Restore Online		
6	Shoppers’		
7	Confidence Act,		
8	and the Electronic		
9	Funds Transfer		
10	Act.		
11	131. The Cardiffs	Walker Dec, (PX-32), p.	Object as to irrelevant
12	purchased media	6-8, ¶¶ 25, 28-29 & p.	and lack of timeframe.
13	time for television	427-434 (Atts. 31-35)	The last air date and
14	commercials to	(Havas Edge); p. 435-535	services provided by
15	promote their film	(Atts. 36-47) (Mercury	Mercury Media to
16	strips through at	Media).	Redwood for Eupepsia
17	least four media		Thin was on December
18	companies:	Szymanski Dec. (PX 39),	25, 2017. Dkt. 432-1 at
19	Inter/Media Time	p. 4, ¶ 16.	25. The last air date for
20	Buying Corp.,		TBX Free was on
21	Havas Edge,	See also Adkinson-	October 30, 2017. Dkt.
22	Diversified	Connor Dec. (PX-38), p.	432-2 at 3-8.
23	Mercury	1, ¶ 5; p. 8, ¶ 31; p. 11-	
24	Communications,	12, ¶¶ 47-51; p. 11, ¶ 46.	
25	LLC (“Mercury		
26	Media”), and		
27	Cannella Response		
28	Television, LLC		

1	("Cannella").		
2	FTC Response to SUF 131: The Cardiffs do not dispute that they purchased		
3	media time from at least four media companies. The "timeframe" is the period		
4	covered by the Complaint, from at least 2014 to the filing of the Complaint.		
5	Redwood's business relationships with each of the four companies were 2013-		
6	2014 (Inter/Media), 2014 (Havas Edge), 2017 (Mercury Media), and 2014-2018		
7	(Cannella). See, e.g., Dkt. 424-1, p. 8 (¶¶ 27, 28), p. 9 (¶ 34); Dkt. 425-1, p. 213.		
8	See also p. 2 <i>supra</i> (explanation re Boilerplate Objection 1 that Mercury Media's		
9	last airing of TBX-FREE long form advertising was February 12, 2018).		
10			
11	This fact is relevant to proving that Redwood's ads were widely disseminated.		
12	The Cardiffs' participation in purchasing media time is also relevant to their		
13	individual liability for injunctive and monetary relief.		
14	132. Cannella bought	Walker Dec. (PX-32), p.	Object as to relevance
15	media time for	6, ¶ 25.	and lack of timeframe.
16	Redwood from		Advertising through
17	2014-2018.		these companies was
18			stopped on January 28,
19			2018. Dkt. 429-1 PX 38
20			at 101-102. Therefore
21			denied after that date.
22	<u>FTC Response to SUF 132:</u> The Cardiffs do not dispute this fact pre-January		
23	28, 2018. The timeframe, 2014-2018, is stated in the fact.		
24			
25	SUF 132 is relevant to proving that Redwood's ads were widely disseminated.		
26	133. In January 2015,	Adkinson-Connor Dec.	Admit.
27	Eunjung Cardiff, as	(PX-38), p. 2, ¶ 7 & p.	
28	Chief Operating	22-47 (Atts. 3-4).	

1	Office of Redwood		
2	Scientific		
3	Technologies,		
4	(Nevada), signed		
5	two Commercial		
6	Media Agreements		
7	with Cannella.		
8	134. Eunjung Cardiff, as	Adkinson-Connor Dec.	Admit.
9	Chief Operating	(PX-38), p. 2, ¶ 8 & p.	
10	Officer of	48-54 (Atts. 5-7).	
11	Redwood		
12	Scientific		
13	Technologies		
14	(Nevada), signed		
15	agreements with		
16	REVShare, a short-		
17	form direct		
18	response television		
19	service provider		
20	that is part of		
21	Cannella, for the		
22	purchase of media		
23	time for short form		
24	advertisements for		
25	TBX-FREE and		
26	Eupepsia Thin.		
27	135. From 2014-2018,	Adkinson-Connor Dec.	Admit.
28	Redwood paid	(PX-38), p. 8, ¶ 32.	

1	Cannella		
2	\$6,581,634.85 to		
3	buy media time for		
4	TBX-FREE,		
5	Eupepsia Thin, and		
6	Prolongz		
7	advertising.		
8	136. For 2016-2017,	Adkinson-Connor Dec.	Admit.
9	Redwood paid	(PX-38), p. 8, ¶ 32.	
10	REVShare \$20,000		
11	to buy media time		
12	for TBX-FREE and		
13	Eupepsia Thin.		
14	137. Eunjung Cardiff	Adkinson-Connor Dec.	Object as to lack of
15	and Jason Cardiff	(PX-38), p. 8, ¶ 31.	timeframe. Defendants
16	decided which ads		stopped its marketing
17	to air through		campaigns in or about
18	Cannella.		February, 2018. Dkt.
19	138. Eunjung Cardiff	Adkinson-Connor Dec.	429-1 PX 38 at 101-102.
20	and Jason Cardiff	(PX-38), p. 8, ¶ 31; p. 11,	Therefore denied after
21	decided the TV	¶ 48.	that date. These ads did
22	markets where ads		not play after in or about
23	for their products		February, 2018.
24	would air through		Therefore denied after
25	media time		that date
26	purchased by		
27	Cannella.		

FTC Response to SUF 137-138: The Cardiffs do not dispute that they decided which ads to air through Cannella and the markets where those ads would air through media time purchased by Cannella pre-February 2018. The period of Redwood’s business relationship with Cannella was 2014-2018. See SUF 132, 135.

139. Eunjung Cardiff directed Cannella to air Eupepsia Thin advertising in “markets . . . in the top 10 for obesity in the country.”	Adkinson-Connor Dec. (PX-38), p. 11, ¶ 48 & p. 762-766 (Att. 22).	Object as to lack of timeframe. Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102. Therefore denied after that date. These ads did not play after in or about February, 2018. Therefore denied after that date. Deny as to any insinuation that Jason and Eunjung Cardiff were solely responsible for what markets the ads played in. Ex. A, Jason Cardiff Declaration ¶¶92, 94; Ex. B, Eunjung Cardiff Declaration ¶¶24-26. The evidence presented
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		by the FTC is one email in which Eunjung Cardiff states that a particular region is a top 10 market for obesity, this in of itself does not present a pattern or practice of the Defendants targeting any specific market.
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FTC Response to SUF 139: The Cardiffs do not dispute that Eunjung Cardiff directed Cannella to run Eupepsia Thin advertising in markets in the “top 10 for obesity in the country.” The timeframe, March 2017, is evident from the cited emails. The Cardiffs’ conclusory denial that they were not solely responsible for choosing the markets in which their ads played fails to identify with specificity or evidentiary support who else was responsible, and nevertheless do not dispute that they at least shared responsibility for those choices. Thus it is insufficient to create a dispute of material fact. The cited paragraphs in their declarations do not address the substance of SUF 139.

140. Eunjung Cardiff and Jason Cardiff chose the TV networks and time slots they wanted for Prolongz, TBX-FREE, and Eupepsia Thin advertising.	Adkinson-Connor Dec. (PX-38), p. 8, ¶ 31; p. 11, ¶¶ 47, 49 & p. 767-779 (Atts. 23-26). Walker Dec. (PX-32), p. 8-9, ¶¶ 34-36.	Object as to lack of timeframe. Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102. The last air date and services provided by Mercury Media to Redwood for Eupepsia
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		<p>Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8. These ads did not play after in or about February, 2018. Therefore denied after that date.</p> <p>Admit as to the Cardiffs choosing the networks that aired the ads.</p>
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FTC Response to SUF 140: The Cardiffs admit that they chose the networks that aired the ads for TBX-FREE, Eupepsia Thin, and Prolongz. The timeframe is the entire period during which they ran ads for the three challenged products, late 2013-2018. Their additional narrative does not bear on this fact and should be disregarded.

<p>141. Eunjung Cardiff and Jason Cardiff directed Cannella on advertising budgets, including how budgets should be allocated to TBX-FREE, Eupepsia Thin, and Prolongz</p>	<p>Adkinson-Connor Dec. (PX-38), p. 8, ¶ 31; p. 11-12, ¶¶ 50-51 & p. 780-784 (Atts. 27-29).</p>	<p>Object as to lack of timeframe. Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102. Therefore denied after that date. These ads did not play after in or about February, 2018.</p>
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1	advertising.		Therefore denied after
2			that date
3	<u>FTC Response to SUF 141:</u> The Cardiffs' denial does not address the substance		
4	of the fact, but nevertheless does not dispute that they both directed Cannella on		
5	advertising budgets prior to February 2018.		
6	The timeframe is the period when Cannella purchased media time for advertising		
7	those three oral film strips.		
8	142. Eunjung Cardiff	Walker Dec. (PX-32), p.	Object as to lack of
9	approved payments	9, ¶ 36.	timeframe. Defendants
10	to media		stopped its marketing
11	companies.		campaigns in or about
12			February, 2018. Dkt.
13			429-1 PX 38 at 101-102.
14			Therefore denied after
15			that date. These ads did
16			not play after in or about
17			February, 2018.
18	<u>FTC Response to SUF 142:</u> The Cardiffs' denial does not address the substance		
19	of the fact, but nevertheless does not dispute that Eunjung Cardiff approved		
20	payments to media companies pre-February 2018.		
21	143. Eunjung Cardiff	Adkinson-Connor Dec.	Deny. Ex. B, Eunjung
22	was Cannella's	(PX-38), p. 2, ¶ 9.	Cardiff Declaration ¶¶ 6,
23	primary contact for		32, 37.
24	Redwood	See Walker Dec. (PX-	
25	advertising.	32), p. 9, ¶ 36 (Eunjung	
26		Cardiff was the main	
27		point of contact for	
28		Redwood's media	

	buying).	
<p><u>FTC Response to SUF 143:</u> The cited paragraphs of Eunjung Cardiff’s declaration do not address this fact, much less dispute the sworn declarations of Kate Adkinson-Connor and Danielle Walker that Eunjung Cardiff was Cannella’s primary contact, nor do they identify an alternative individual who served as Cannella’s primary contact for Redwood advertising.</p>		
<p>144. Eunjung Cardiff was the person who most often approved the airing of TBX-FREE, Eupepsia Thin, and Prolongz advertising through Cannella.</p>	<p>Adkinson-Connor Dec. (PX-38), p. 8, ¶ 31.</p>	<p>Deny. Ex. B, Eunjung Cardiff Declaration ¶¶6, 32, 37.</p>
<p><u>FTC Response to SUF 144:</u> The cited paragraphs of Eunjung Cardiff’s declaration do not address this fact, much less dispute the sworn declaration of Kate Adkinson-Connor that Eunjung Cardiff was the person who most often approved tv ad airings, nor do they identify any other individuals at Redwood who approved airings of Redwood advertising.</p>		
<p>145. Cannella representatives also communicated with Jason Cardiff, and he also made decisions on these issues.</p>	<p>Adkinson-Connor Dec. (PX-38), p. 2, ¶ 9; p. 8, ¶ 31.</p>	<p>Object as to lack of timeframe. Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102. Therefore denied after that date. These ads did</p>

		<p>not play after in or about February, 2018.</p> <p>Object as to “these issues” as a vague and Defendant is unable to admit or deny this.</p>
<p>FTC Response to SUF 145: SUF 145 clearly follows SUF 144 and references approving airings of Redwood advertising, as does the evidentiary citation to ¶ 31 of the sworn Declaration of Kate Adkinson-Connor. The timeframe is the period of Redwood’s business relationship with Cannella, 2014-2018. Nevertheless, the Cardiffs do not dispute this fact pre-February 2018. Their additional narrative does not bear on this fact and should be disregarded.</p>		
<p>146. Eunjung Cardiff was in charge of tracking media performance.</p>	<p>Melendez Dec. (PX-35), p. 5, ¶ 18.</p> <p>Adkinson-Connor Dec. (PX-38), p. 13-14, ¶¶ 60-61 & p. 521-529 (Att. 11) (Eunjung Cardiff discontinued Cannella’s access to database that allowed monitoring of sales attributable to television ads because she preferred to track advertising performance in-house at Redwood).</p>	<p>Object as to lack of timeframe. Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102. Therefore denied after that date. These ads did not play after in or about February, 2018. Otherwise, admit.</p>

	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 62, ¶ 180 & Dkt. 23, p. 45 (Att. 277).</p> <p>Walker Dec. (PX-32), p. 9, ¶ 36.</p> <p>Carranza Dec. (PX-33), p. 2, ¶ 10.</p>	
<p>147. Eunjung Cardiff received daily charts showing which advertisement generated each sales call.</p>	<p>Melendez Dec. (PX-35), p. 5, ¶ 18.</p>	
<p>FTC Response to SUF 146-147: the Cardiffs admit these facts pre-February 2018.</p>		
<p>148. Jason Cardiff and Eunjung Cardiff decided what program listings and descriptions television viewers would see for Prolongz, TBX-FREE, and Eupepsia Thin ads</p>	<p>Adkinson-Connor Dec. (PX-38), p. 12-13, ¶¶ 53-59 & p. 785-812 (Atts. 30-40); p. 785 (Att. 30).</p>	<p>Object as to relevance and lack of timeframe. Cardiffs decided to stop all visual advertising for its products in or about February, 2018 in response to the FTC CID. Advertising was stopped on January 28, 2018. Dkt. 429-1 PX 38 at 101-102.</p>

on television programing guides.		The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8. Therefore denied after that date.
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FTC Response to SUF 148: The Cardiffs do not dispute that they decided on the program listings and descriptions fact pre-February 2018. Because the program listings contained some of the challenged advertising claims (see SUF 149-153), the fact that the Cardiffs chose the descriptors is relevant to their participation in the deceptive advertising, and therefore their individual liability for injunctive and monetary relief.

149. Jason Cardiff monitored program listings for Prolongz advertising and recommended that Cannella use “Make her climax” and “sex party” as progam listings.	Adkinson-Connor Dec. (PX-38), p. 12, ¶¶ 54-56 & p. 786-804 (Atts. 31- 35); p. 785 (Att. 30).	Object as to relevance and lack of timeframe. Advertising was stopped on January 28, 2018. Dkt. 429-1 PX 38 at 101-102. Therefore denied after that date.
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FTC Response to SUF 149: The Cardiffs do not dispute this fact pre-January

28, 2018. The timeframe of at least 2015-2017 is evident in the cited paragraphs of the sworn Declaration of Kate Adkinson-Connor. Jason Cardiff's participation in monitoring tv advertising program listings is relevant to his individual liability for injunctive and monetary relief.

150. Eunjung Cardiff monitored program listings for TBX-FREE advertising and asked Cannella to confirm a TBX-FREE listing, which was "Free FRM Cigarettes!," coupled with the program description, "Save your life and lives of loved ones with withdrawal free guarantee stop smoking aid."	Adkinson-Connor Dec. (PX-38), p. 12-13, ¶ 57 & p. 805-807 (Att. 36); p. 785 (Att. 30).	Object as to relevance and lack of timeframe. Cardiffs decided to stop all visual advertising for its products in or about February, 2018 in response to the FTC CID. Advertising was stopped on January 28, 2018. Dkt. 429-1 PX 38 at 101-102. The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for
151. Eunjung Cardiff monitored program listings for TBX-FREE advertising and asked Cannella to confirm a TBX-FREE listing,	Adkinson-Connor Dec. (PX-38), p. 12-13, ¶ 57 & p. 808 (Att. 37); p. 785 (Att. 30).	TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8. Therefore denied after that date.

1	which was “STOP		
2	SMOKING		
3	NOW.”		
4	FTC Response to SUF 150-151: The Cardiffs do not dispute these facts pre-		
5	February 2018. The timeframe of at least 2016 is evident in the cited paragraph		
6	and attachments of the sworn Declaration of Kate Adkinson-Connor. Eunjung		
7	Cardiff’s participation in monitoring tv advertising program listings for inclusion		
8	of challenged advertising claims is relevant to her individual liability for		
9	injunctive and monetary relief.		
10	152. On April 24, 2017,	Adkinson-Connor Dec.	Object as to relevance
11	Eunjung Cardiff	(PX-38), p. 13, ¶ 58 & p.	
12	asked Cannella to	810 (Att. 38).	and lack of timeframe.
13	change the		Advertising was stopped
14	program listing for		on January 28, 2018. Dkt.
15	Eupepsia Thin		429-1 PX 38 at 101-102.
16	advertising to		Therefore denied after
17	“FAST WEIGHT		that date.
18	LOSS.”		
19	153. On September 14,	Adkinson-Connor Dec.	
20	2017, Eunjung	(PX-38), p. 13, ¶ 59 & p.	
21	Cardiff asked	811 (Att. 39).	
22	Cannella to update		
23	the TBX-FREE		
24	and Eupepsia Thin		
25	program listings to		
26	“TBX Free- Stop		
27	Smoking Now		
28	(Life saving		

1	information about		
2	how to kick the		
3	habit for good)[.]”		
4	and “Eupepsia		
5	Thin- Fast Weight		
6	Loss (Lose up to		
7	100 pounds)[.]”		
8	respectively.		
9	FTC Response to SUF 152-153: The Cardiffs do not dispute these facts pre-		
10	January 28, 2018. The timeframe of April and September 2017 is stated in the		
11	facts. Eunjung Cardiff’s instructions to Cannella to include challenged		
12	advertising claims in tv advertising program listings is relevant to her individual		
13	liability for injunctive and monetary relief.		
14	154. Jason Cardiff and	Walker Dec. (PX-32), p.	Object as to relevance
15	Eunjung Cardiff	7-8, ¶¶ 29-30 & p. 466-	and lack of timeframe.
16	made all of the	535 (Atts. 39-47)	The last air date and
17	decisions about	(Mercury Media).	services provided by
18	media buying by		Mercury Media to
19	Mercury Media for		Redwood for Eupepsia
20	TBX-FREE and		Thin was on December
21	Eupepsia Thin		25, 2017. Dkt. 432-1 at
22	advertising,		25. The last air date for
23	including		TBX Free was on
24	approving budgets		October 30, 2017. Dkt.
25	and choosing		432-2 at 3-8. Therefore
26	media slots.		denied after that date.
27	155. Eunjung Cardiff	Walker Dec. (PX-32), p.	
28	instructed	8, ¶ 33 & p. 523-527	

1	Mercury Media	(Att. 44).	
2	about the listings		
3	she wanted to		
4	appear on		
5	television		
6	programming		
7	guides for		
8	Eupepsia Thin and		
9	TBX-FREE.		
10	156. On August 11,	Walker Dec. (PX-32), p.	
11	2017, Eunjung	8, ¶ 33 & p. 523-527	
12	Cardiff told	(Att. 44).	
13	Mercury Media		
14	that the television	Sands 1st Dec. (TRO PX-	
15	guide descriptor	1), Dkt. 7, p. 62, ¶ 178 &	
16	for TBX-FREE	Dkt. 22, p. 86 (Att. 234).	
17	should be “STOP		
18	SMOKING NOW-		
19	TBX Free is the #1		
20	selling stop		
21	smoking aid-		
22	guaranteed!” and		
23	the descriptor for		
24	Eupepsia Thin		
25	should be “FAST		
26	WEIGHT LOSS-		
27	Lose up to 10lbs in		
28	1 week!”		

FTC Response to SUF 154-156: The Cardiffs' general objections do not dispute the specific evidence showing that they controlled media budgets and provided instructions on tv descriptors and are therefore insufficient to create a genuine factual dispute. Moreover, they do not dispute SUF 154-156 pre-December 25, 2017.

These facts are relevant to the Cardiffs' individual liability for injunctive and monetary relief.

157. Eunjung Cardiff admits that she participated in responding to network requests for substantiation.	E. Cardiff 3rd RFA Resp., p. 10, ¶ 167 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 85, (Att. 7)).	The Cardiffs provided substantiation packets to networks who requested substantiation and relied on the networks advice as to whether the claims
158. Jason Cardiff and Eunjung Cardiff admit that Eunjung Cardiff supervised responses to network requests for substantiation.	J. Cardiff 3rd RFA Resp., p. 12, ¶ 174 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 35 (Att. 3)). E. Cardiff 3rd RFA Resp., p. 10-11, ¶ 168 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 85-86 (Att. 7)).	Redwood was making for its products were properly substantiated. Ex. A, Declaration of Jason Cardiff ¶12 and Ex. 3 and 4. Object as to irrelevant and lack of timeframe. Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102. Therefore denied after that date. These ads

		<p>did not play after in or about February, 2018. Therefore denied after that date</p>
<p>FTC Response to SUF 157-158: The Cardiffs admit they provided “substantiation packets” to networks and do not dispute these facts, including that Eunjung Cardiff supervised responses to the networks, pre-February 2018. The cited paragraph in Jason Cardiff’s declaration does not state that the Cardiffs “relied on the networks [sic] advice as to whether the claims Redwood was making for its products were properly substantiated.”</p> <p>The Cardiffs’ involvement in responding to requests for substantiation for product claims is relevant to their individual liability for injunctive and monetary relief.</p>		
<p>159. When Cannella’s account manager received inquiries from television networks during their advertising review process for Redwood ads, including inquiries about advertising claim substantiation, she referred those questions to</p>	<p>Adkinson-Connor Dec. (PX-38), p. 8-9, ¶¶ 35-36.</p>	<p>Admit. Defendants relied on the networks representations that the substantiation claims were sufficient to proceed with airing the informercials and thus the products were in compliance with all regulations. Ex. A, Declaration of Jason Cardiff ¶12; Ex. B, Declaration of Eunjung Cardiff ¶32.</p>

1	Eunjung Cardiff.		Object as to relevance
2	160. In March 6, 2015,	Adkinson-Connor Dec.	and lack of timeframe.
3	Redwood's	(PX-38), p. 9, ¶ 37 & p.	Defendants stopped its
4	account manager at	530-531 (Att. 12).	marketing campaigns in
5	Cannella informed		or about February, 2018.
6	Eunjung Cardiff		Dkt. 429-1 PX
7	that the A&E		38 at 101-102. Therefore
8	network had asked		denied after that date.
9	for substantiation		These ads did not play
10	for Prolongz.		after in or about
11	When asked if she		February, 2018.
12	had "any evidence		
13	of clinical studies		
14	or anything more		
15	that we can provide		
16	to the network,"		
17	Eunjung Cardiff		
18	that "[t]he FDA		
19	registration is		
20	proof that our		
21	product is certified		
22	by the FDA as an		
23	over the counter		
24	drug that treats the		
25	condition[.] It is a		
26	very powerful		
27	document granted		
28	and should		

1	suffice....”	
2	161. In June 2015,	Adkinson-Connor Dec.
3	Cannella’s account	(PX-38), p. 9, ¶ 38 & p.
4	manager informed	532-535 (Att. 13).
5	Eunjung Cardiff	
6	that, in connection	
7	with Prolongz	
8	advertising, the	
9	FOX Broadcasting	
10	Company had	
11	requested “support	
12	for the safety and	
13	efficacy of product	
14	– this support must	
15	address all claims	
16	made.”	
17	162. In October 2016,	Adkinson-Connor Dec.
18	when Cannella’s	(PX-38), p. 9, ¶ 39 & p.
19	account manager	536-722 (Att. 14).
20	informed Eunjung	
21	Cardiff that, in	
22	connection with	
23	TBX-FREE	
24	advertising,	
25	Cannella’s	
26	REVShare division	
27	had requested	
28	“substantiation of	

1	claims made,”	
2	Eunjung Cardiff	
3	asked the account	
4	manager to send	
5	REVShare the	
6	TBX-FREE	
7	substantiation	
8	materials that	
9	Redwood had	
10	submitted to	
11	Cannella.	
12	163. In September 2017,	Adkinson-Connor Dec.
13	Cannella’s account	(PX-38), p. 10, ¶ 40 & p.
14	manager informed	723-727 (Att. 15).
15	Eunjung Cardiff	
16	that, in connection	
17	with TBX-FREE	
18	advertising, the	
19	SCRIPPS network	
20	was “very strict	
21	and requires this	
22	type of product to	
23	have FDA	
24	approval and not	
25	just be FDA	
26	registered.”	
27	164. Eunjung Cardiff	E. Cardiff 3rd RFA
28	admits that during	Resp., p. 10,

1	the clearance	¶ 166 (Sanger Dec. (PX-	
2	process for	52), p. 2, ¶ 10 & p. 85	
3	Eupepsia Thin	(Att. 7)).	
4	television		
5	advertising, at least		
6	one television		
7	network requested		
8	substantiation for		
9	certain statements		
10	made in an		
11	advertisement.		
12	FTC Response to SUF 159-164: The Cardiffs admit the facts regarding		
13	Eunjung Cardiff's knowledge about and involvement in responding to tv network		
14	requests for substantiation. Their additional narrative is argument and should be		
15	disregarded.		
16			
17	The timeframe is the duration of the business relationship between Redwood and		
18	Cannella (2014-2018), which is evident from the dates of the cited emails. These		
19	facts are relevant to Eunjung Cardiff's individual liability for injunctive and		
20	monetary relief.		
21	165. In March 2017,	Adkinson-Connor Dec.	Objection as to
22	Cannella's account	(PX-38), p. 10, ¶ 41 & p.	relevance. Defendants
23	manager informed	728-729 (Att. 16).	stopped its marketing
24	Eunjung Cardiff		campaigns in or about
25	that, in connection		February, 2018. Dkt.
26	with Eupepsia Thin		429-1 PX 38 at 101-102.
27	advertising,		Therefore denied after
28	television networks		that date. These ads did

1	might have ad		not play after in or about
2	“clearance issues”		February, 2018.
3	because of past		
4	FTC law		
5	enforcement		
6	actions related to		
7	weight-loss		
8	products, that		
9	“networks are		
10	going to require		
11	substantiation,”		
12	and that		
13	“[t]estimonials will		
14	need to be		
15	provided, to make		
16	sure weight loss		
17	claims weren’t due		
18	to being paid.”		
19	FTC Response to SUF 165: The Cardiffs do not dispute that Eunjung Cardiff		
20	was informed that “networks are going to require substantiation” for Eupepsia		
21	Thin and that the advertising might have “ad clearance issues” because of past		
22	FTC law enforcement actions.		
23			
24	Eunjung Cardiff’s knowledge of the need to substantiate advertising claims and		
25	past FTC actions is relevant to her individual liability for injunctive and		
26	monetary relief.		
27	166. In March 2017,	Adkinson-Connor Dec.	Deny. The Cardiffs
28	Eunjung Cardiff	(PX-38), p. 10, ¶ 42 & p.	ensured that the

1	sent Cannella's	730-737 (Att. 17).	testimonials were real
2	account manager		and from the person who
3	talent releases for	Hogan Dec. (PX-45), p.	said them. The Cardiffs
4	the testimonialists	1, ¶ 6 (had not heard of	had each testimonialist
5	that appear in	Eupepsia Thin before	sign a form that indicated
6	Eupepsia Thin TV	shooting the commercial	that what they were
7	advertising,	and had never used it).	saying was true and
8	including Dan		based off their own
9	Hogan, Karen	Preston Dec. (PX-46), p.	personal experience with
10	Spero, and Todd	1, ¶¶ 3, 6, 7 & (had not	the product. Ex. A, Jason
11	Preston, who had	heard of Eupepsia Thin	Cardiff Declaration ¶¶91-
12	been hired by a	prior to filming	92. The form said: All of
13	talent agency and	testimonial).	the statements made are
14	had not used		true and accurate, all of
15	Eupepsia Thin to	Spero Dec. (PX-47), p. 1,	my on-screen
16	lose weight.	¶ 6 (did not use Eupepsia	representation, of the
17		Thin to lose weight and	product [product], are of
18		had not heard of it prior	my own true story. Id.If
19		to filming commercial).	the testimonialists lied
20			about taking the product
21			it was unbeknownst to
22			the Cardiffs.

FTC Response to SUF 166: The Cardiffs' general denial does not dispute the specific evidence of a March 13, 2017 email from Eunjung Cardiff to Cannella attaching the talent releases for the three testimonialists. They also do not dispute that the infomercial was filmed before Eupepsia Thin was first sold to the public. See Dkt. 424-1, p. 13, ¶ 52. The Cardiffs also do not dispute the sworn declarations of the three testimonialists that they did not use Eupepsia Thin to

lose weight. They merely present argument about whether the Cardiffs knew the testimonials were fake. In fact, Jason Cardiff knew that the testimonialists had not used Eupepsia Thin to lose weight. See SUF 199.

167. Jason Cardiff and Eunjung Cardiff admit that Eunjung Cardiff's voice is heard in a recorded message promoting TBX-FREE.	<p>J. Cardiff 2nd RFA Resp., p. 13-14, ¶ 105 (Sanger Dec. (PX-52), p. 1, ¶ 5 & p. 20-21 (Att. 2)).</p> <p>E. Cardiff 2nd RFA Resp., p. 13, ¶ 99 (Sanger Dec. (PX-52), p. 2, ¶ 9 & p. 73 (Att. 6)).</p> <p>See also Walker Dec., (PX-32), p. 6, ¶ 22; p. 19, ¶ 85 (identifying PX-1, Att. 125, as a ringless voicemail recording with the voice of Eunjung Cardiff that was sent to consumers).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 38, ¶¶ 111 & Dkt. 13, p. 66-77 (Atts. 125, 126).</p>	<p>Object as to lack of timeframe. Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102.</p> <p>The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8. These ads did not play after in or about February, 2018. Therefore denied after that date.</p>
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FTC Response to SUF 167: The Cardiffs do not dispute that Eunjung Cardiff's

voice is heard in a recorded message promoting TBX-FREE, and admit that the ringless voicemail with her voice was delivered to consumers (see SUF 168). FTC SUF 167 clearly refers to Defendants' use of ringless voicemails, which Defendants ran from early 2018 (see SUF 856) to approximately July 2018 (Dkt. 441-4, p. 6, ¶ 21). Their post-February 2018 denial is based on irrelevant tv advertising airing dates and does not explain with specificity or evidence why the Cardiffs' earlier and current admissions that the voice is Eunjung Cardiff's should now be disregarded.

168. Eunjung Cardiff's recorded message promoting TBX-FREE was delivered to consumers' voicemail boxes.	Walker Dec. (PX-32), p. 19, ¶¶ 83, 85.	Admit
169. Eunjung Cardiff provided the voiceover for at least two Eupepsia Thin television advertisements.	Walker Dec. (PX-32), p. 6, ¶¶ 22, 24 (identifying the voice of Eunjung Cardiff in voiceovers in two Eupepsia commercials bates-stamped bates-stamped CANCARDIFF0000033 and CAN-CARDIFF0000046. See also E. Cardiff 4th RFA Resp., p. 11-13, ¶¶	Object as to lack of timeframe and relevance. Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102. The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for

	310, 311, 315, 316 (Sanger Dec. (PX-52), p. 2, ¶ 11 & p. 108-109 (Att. 8)).	TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8. These ads did not play after in or about February, 2018. Therefore denied after that date.
<p>FTC Response to SUF 169: The Cardiffs do not dispute that Eunjung Cardiff provided the voiceover for two Eupepsia Thin tv advertisements and do not dispute the fact pre-February 2018.</p> <p>The timeframe is the period Defendants advertised Eupepsia Thin on tv (2017-2018), and Eunjung Cardiff's participation in creating tv advertisements containing deceptive claims is relevant to her individual liability for injunctive and monetary relief.</p>		
170. Eunjung Cardiff had exclusive control of the log-ins for the Advanced Mens Institute, Run Away Products, and Redwood bank accounts.	Walker Dec. (PX-32), p. 2, ¶ 8	Admit.
171. Eunjung Cardiff signed personal guarantees and confessions of	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 62, ¶ 177 & Dkt. 24-12, p. 14 – Dkt. 24-13, p. 3 (Att. 212);	Admit.

1	judgment	Dkt. 24-13, p. 15 – Dkt.	
2	guaranteeing the	24-14, p. 6 (Att. 214);	
3	debt of Run Away,	Dkt. 22, p. 2-23 (Att.	
4	AMI, Redwood	215).	
5	Scientific		
6	Technologies, and	Yallen Dec. (PX-40), p.	
7	Identify.	2-3, ¶ 10, 14(c), 16(E) &	
8		p. 15, 30 (Att. 2); p. 137	
9		(Att. 7); p. 141 Recital E	
10		(Att. 8) (personal	
11		guaranty of debt of Run	
12		Away).	
13			
14		Walker Dec. (PX-32), p.	
15		18, ¶¶ 80-81 & p. 766,	
16		768 (Att. 129)	
17		(confession of judgment	
18		for debt of Redwood	
19		Scientific Technologies,	
20		Inc., Identify LLC, AMI	
21		LLC, and other entities,	
22		signed by Eunjung	
23		Cardiff, individually and	
24		on behalf of the entities);	
25		p. 782, 784 (Att. 131)	
26		(confession of judgment	
27		for debt of Identify LLC,	
28		signed by Eunjung	

	<p>Cardiff, individually and on behalf of Identify; p. 816, 822 (Att. 132) (confession of judgment for debt of Redwood Scientific Technologies, Inc., and Identify, LLC, signed by Eunjung Cardiff, individually and on behalf of the entities) (pages out of order in the original).</p>	
<p>172. The Cardiffs transferred their Redwood Delaware common shares to Carols Place Limited Partnership.</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 76, ¶ 202 & Dkt. 23, p. 76-77 (Att. 323).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 52-53, ¶ 147 & Dkt. 13-1, p. 133-150 (Att. 169).</p>	<p>Admit.</p>
<p>173. Eunjung Cardiff controlled the company banking and merchant accounts, and directed which bills to pay and</p>	<p>Rodoracio Dec. (PX-36), p. 5, ¶ 21.</p>	<p>Admit.</p>

1	when.		
2	174. Facebook	Sands 1st Dec. (TRO PX-	Admit.
3	advertising for	1), Dkt. 7, p. 62, ¶ 178 &	
4	Redwood oral film	Dkt. 22, p. 92-123 (Atts.	
5	strips was paid for	236-237).	
6	using a credit card		
7	issued to Eunjung	Walker Dec. (PX-32), p.	
8	Cardiff in the name	10, ¶ 40.	
9	of Run Away		
10	Products.		
11	175. Eunjung Cardiff	Walker Dec. (PX-32), p.	Admit.
12	would then pay	10, ¶ 40.	
13	that card with		
14	Redwood funds		
15	and funds from		
16	other Cardiff		
17	companies as		
18	needed.		
19	176. Jason Cardiff and	George Dec. (TRO PX-	Deny as to the Porsche.
20	Eunjung Cardiff	2), Dkt. 6, p. 10, ¶¶ 25-	
21	used corporate	27.	
22	bank accounts to		
23	pay for		
24	automobiles leased		
25	from BMW,		
26	Porsche, and		
27	Bentley.		
28	FTC Response to SUF 176: The Cardiffs' bald denial does not cite to any		

evidentiary support or explain their basis for disputing the FTC’s forensic accountant’s specific finding that between October 2015 and June 2018, 50 separate payments totaling \$134,403.49 were made to Porsche, ranging from \$2,297.37 to \$3,006.33 each.

177. Jason Cardiff and Eunjung Cardiff charged luxury cruises, resort lodging, private charter air travel, and clothing and department store purchases to the credit cards of the corporate defendants and their related companies.	George Dec. (TRO PX-2), Dkt. 6, p. 11, ¶¶ 30-33.	Neither admit or deny, however it is true that Jason and Eunjung Cardiff received \$335,000 of benefit from funds of Corporate Defendants. Dkt. 334-2 Declaration of Jason Cardiff ¶8b. This is undisputedly the only benefits Defendants received. <i>Id.</i>
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FTC Response to SUF 177: The Cardiffs’ use of the phrase “neither admit or [sic] deny” is the functional equivalent of not disputing the fact.

The Cardiffs’ statement that they received “\$335,000 of benefit from funds of Corporate Defendants” and that “[t]his is undisputedly the only benefits Defendants received” is argument that is, in fact, disputed by the FTC. FTC’s Statement of Genuine Disputes, Dkt. 490-1, p. 18, ¶ 26. See also Dkt. 423-2, p. 19-21, 52-53 (discussion of alter-ego in FTC’s Motion for Summary Judgment).

178. Jason Cardiff and Eunjung Cardiff	J. Cardiff 4th RFA Resp., p. 7, ¶ 298 (Sanger Dec.	Admit
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1	admit that Eunjung	(PX-52), p. 1, ¶ 7 & p. 58	
2	Cardiff approved	(Att. 4)).	
3	payment of		
4	Gawk's invoice for	E. Cardiff 4th RFA	
5	1.5 million ringless	Resp., p. 10,	
6	voice mails.	¶ 301 (Sanger Dec. (PX-	
7		52), p. 2, ¶ 11 & p. 107	
8		(Att. 8)).	
9			
10		See also Walker Dec, p.	
11		19, ¶¶ 82, 84 & p. 924-	
12		927 (Atts. 141-142); p.	
13		929-930 (Att. 144); p.	
14		931, 934 (Att. 145)	
15		(Eunjung Cardiff paid	
16		\$14,350 from an	
17		American Express card in	
18		her name and the name of	
19		Advanced Mens	
20		Institute).	
21			
22		Sands 3rd Dec. (PX-51),	
23		p. 3, ¶ 9 & p. 68-71 (Atts.	
24		19-20).	
25	179. Eunjung Cardiff	Walker Dec, p. 19, ¶¶ 82,	Admit
26	approved payment	84 & p. 924-925 (Atts.	
27	of \$10,375 to Just	141); p. 928 (Att. 143); p.	
28	Deliver It to allow	931, 934 (Att. 145)	

1	Redwood to	(Eunjung Cardiff paid	
2	deliver ringless	\$10,375 from an	
3	voicemail	American Express card in	
4	messages to	her name and the name of	
5	consumers.	Advanced Mens	
6		Institute).	
7	180. Jason Cardiff and	J. Cardiff 4th RFA Resp.,	Admit
8	Eunjung Cardiff	p. 7, ¶ 299 (Sanger Dec.	
9	admit that Eunjung	(PX-52), p. 1, ¶ 7 & p. 58	
10	Cardiff approved	(Att. 4)) (Eunjung	
11	payment of	Cardiff approved	
12	invoices to the	payment to the foreign	
13	foreign	manufacturers of	
14	manufacturers of	Eupepsia Thin oral film	
15	TBX-FREE and	strips).	
16	Eupepsia Thin oral		
17	film strips.	E. Cardiff 4th RFA	
18		Resp., p. 10, ¶¶ 302, 303	
19		(Sanger Dec. (PX-52), p.	
20		2, ¶ 11 & p. 107 (Att. 8))	
21		(she approved payment to	
22		the foreign manufacturers	
23		of TBX-FREE and	
24		Eupepsia Thin oral film	
25		strips).	
26			
27		See also Walker Dec.	
28		(PX-32), p. 11, ¶ 50.	

181. Eunjung Cardiff approved the content of print ads for TBX-FREE, monitored their performance, and received reports about customer calls generated by print advertising and the resulting sales amounts.	Walker Dec. (PX-32), p. 10, ¶ 42 & p. 600-619 (Atts. 61-66).	Object as to lack of timeframe and relevance, Defendants stopped its marketing campaigns in or about February, 2018. Ex. A, Declaration of Jason Cardiff ¶¶7, 9, and 46-53. Therefore denied after that date. At times prior to February, 2018, Defendants provided input as to the substance of the ads.
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FTC Response to SUF 181: The Cardiffs do not dispute that Eunjung Cardiff approved and monitored print ads for TBX-FREE.

The time frames of November 2016 and January 2017 are evident from the cited emails sent by Eunjung Cardiff.

Eunjung Cardiff’s participation in and control over the placement and monitoring of TBX-FREE print ads containing deceptive claims like “88% success rate,” “Clinically Proven: New England journal of Medicine,” and “smokers can now stop smoking with TBX-FREE” is relevant to her individual liability for injunctive and monetary relief. See, e.g., Dkt. 426-1, p. 25.

182. Redwood Scientific Technologies, Inc. (“Redwood”) retained Cannella	Adkinson-Connor Dec. (PX-38), p. 1, ¶ 5.	Object as to lack of timeframe and relevance, Defendants stopped its marketing campaigns in
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1	Response		or about February, 2018.
2	Television		Dkt. 429-1 PX 38 at 101-
3	("Cannella"), to		102; Ex. A, Declaration
4	place television		of Jason Cardiff ¶¶ 7, 9,
5	advertising on TV		and 46-53. Therefore
6	networks for TBX-		denied after that date. At
7	FREE, Eupepsia		times prior to February,
8	Thin, Prolongz,		2018, Defendants
9	and other products.		provided input as to
10	183. At Redwood's	Adkinson-Connor Dec.	where and when
11	request, Cannella	(PX-38), p. 1, ¶ 5.	advertising would run.
12	purchased media		
13	time for Redwood		
14	to advertise these		
15	products across the		
16	United States.		
17	184. Most of the ads for	Adkinson-Connor Dec.	
18	which Cannella	(PX-38), p. 3-4, ¶ 13.	
19	purchased media		
20	time on behalf of		
21	Redwood were		
22	long-form ads		
23	lasting 28 minutes		
24	and 30 seconds		
25	(28:30).		
26	FTC Response to SUF 182-184: The Cardiffs do not dispute that they hired		
27	Cannella to place tv advertising across the United States.		
28			

The timeframe is Redwood’s business relationship with Cannella (2014-2018).

The fact that Redwood advertised nationwide is relevant to proving that their deceptive claims were widely disseminated.

185. Defendants paid an online contractor \$130 to gather articles about the main ingredient in TBX-FREE as “substantiation” of the product’s efficacy for smoking cessation.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 121-122 (Att. 001). See also Walker Dec. (PX-32), p. 10, ¶ 43 (at Jason Cardiff’s direction, she found an online copywriter to help gather articles about product ingredients).	Admit
186. The FTC has published guidance on certain weight loss claims that experts say cannot be true, which are referred to as “gut check claims.”	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 18 & Dkt. 10, p. 69 (Att. 030).	Admit
187. The seven “gut check claims” include claims that a product causes	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 18 & Dkt. 10, p. 69, 71-72 (Att. 030).	Admit

1	weight loss of two		
2	pounds or more a		
3	week for a month		
4	or more without		
5	dieting or exercise,		
6	or that it causes		
7	substantial weight		
8	loss for all users.		
9	188. Several of the	Sands 1st Dec. (TRO PX-	Object as to lack of
10	claims used to	1), Dkt. 7, p. 6, ¶ 18 &	timeframe and irrelevant.
11	promote Eupepsia	Dkt. 10, p. 69-75 (Att.	Object as to lack of
12	Thin were “gut	030).	timeframe and relevance,
13	check claims.”		Defendants stopped its
14		SUF 485, 486, 488, 493,	marketing campaigns in
15		496, 499, 506, 508, 520,	or about February, 2018.
16		522.	Dkt. 429-1 PX 38 at 101-
17	189. In April 2017, Jason	Sands 3rd Dec. (PX-51),	102; Ex. A, Declaration
18	Cardiff was told	p. 3, ¶ 9 & p. 89 (Att.	of Jason Cardiff ¶¶ 7, 9,
19	that the head of	30).	and 46-53 The last air
20	underwriting at the		date and services
21	bank RMS had		provided by Mercury
22	noted that claims		Media to Redwood for
23	that you do not		Eupepsia Thin was on
24	have to change		December 25, 2017. Dkt.
25	your habits and		432-1 at 25. The last air
26	you will		date for TBX Free was
27	miraculously lose		on October 30, 2017.
28	weight was one of		Dkt. 432-2 at 3-8.

1	the FTC's and the		Therefore denied after that date.
2	FDA's top		
3	indicators of a		
4	problem product.		
5	190. In April and May	Sands 1st Dec. (TRO PX-	
6	2017, Jason Cardiff	1), Dkt. 7, p. 61, ¶ 174 &	
7	received an email	Dkt. 24-9, p. 6-7 (Att.	
8	noting that the	197).	
9	bank RMS had		
10	expressed concerns	Sands 3rd Dec. (PX-51),	
11	that claims being	p. 3, ¶ 9 & p. 90-92 (Att.	
12	made for Eupepsia	31).	
13	Thin were similar		
14	to claims that the		
15	FTC had identified		
16	as false and		
17	misleading "gut		
18	check" claims,		
19	including claims		
20	the product caused		
21	weight loss of two		
22	pounds or more a		
23	week for a month		
24	or more without		
25	dieting or exercise.		
26	FTC Response to SUF 188-190: The Cardiffs do not dispute that several of		
27	their Eupepsia Thin claims were "gut check claims," or that Jason Cardiff had		
28	been informed that claims like "you do not have to change your habits and you		

will miraculously lose weight” were one of the FTC’s and FDA’s top indicators of a problem product, and that RMS bank had concerns about Defendants’ use of those claims.

The timeframe of April and May 2017 is evident from the facts themselves and the cited emails.

The Cardiffs did not cease advertising Eupepsia Thin in February 2018. SUF 938.

Jason Cardiff’s knowledge of RMS’s concerns over the gut check claims is relevant to his individual liability for injunctive and monetary relief.

191. Defendants hired an online contract researcher to gather articles on the listed active ingredient in Eupepsia Thin as “substantiation” of the product’s efficacy as a weight loss aid, for which she was paid \$130.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 126-128 (Att. 001). Walker Dec. (PX-32), p. 10, ¶ 43.	Admit.
192. In March 2017, Cannella’s account manager sent	Adkinson-Connor Dec. (PX-38), p. 10-11, ¶ 43 & p. 738-758 (Atts. 18-19).	Object to this statement as irrelevant. The Cardiffs decided to stop

1	Eunjung Cardiff		all paid advertising for its
2	information about		products in or about
3	an FTC lawsuit		February, 2018 in
4	relating to		response to the FTC CID.
5	deceptive weight-		Advertising was stopped
6	loss claims and a		on January 28, 2018. Dkt.
7	copy of the FTC's		429-1 PX 38 at 101-102.
8	publication, "Gut		Additionally, the Cardiffs
9	Check: A		modified the website for
10	Reference Guide		its products eliminating
11	for Media on		many of these claims. Ex.
12	Spotting False		A, Declaration of Jason
13	Weight Loss		Cardiff ¶¶7, 9, and 46-53.
14	Claims," and		
15	Eunjung Cardiff		
16	replied "we will		
17	take this under		
18	advisement."		
19	193. Eunjung Cardiff	Adkinson-Connor Dec.	
20	told the Cannella	(PX-38), p. 10-11, ¶ 43 &	
21	Account Manager	p. 756-758 (Att. 19).	
22	who sent her the		
23	FTC's "Gut		
24	Check" publication		
25	that she wanted to		
26	send the Eupepsia		
27	Thin ad "to all the		
28	networks " and		

1	asked “[w]hich		
2	networks do you		
3	think are the most		
4	lenient.”		
5	FTC Response to SUF 192-193: The Cardiffs do not dispute that Cannella		
6	informed Eunjung Cardiff of an FTC weight-loss law enforcement action and		
7	forwarded her the FTC’s publication “Gut Check” claims. They also do not		
8	dispute that Eunjung Cardiff’s response to receiving that information was to seek		
9	out the “most lenient” tv networks to place Eupepsia Thin advertising.		
10			
11	Eunjung Cardiff’s knowledge that Gut Check claims could invite scrutiny from		
12	the FTC and interest in placing Eupepsia Thin advertising on “lenient” tv		
13	networks is relevant to her individual liability for injunctive and monetary relief.		
14	194. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	Admit, however
15	Eunjung Cardiff	p. 18, ¶ 201 (Sanger Dec.	Defendants contend that
16	each admit that	(PX-52), p. 1, ¶ 6 & p. 41	there were human clinical
17	during the time	(Att. 3)).	studies and other
18	Eupepsia Thin was		published materials
19	being advertised as	E. Cardiff 3rd RFA	relating to the active
20	an effective	Resp., p. 15, ¶ 195	ingredients of Eupepsia
21	appetite	(Sanger Dec. (PX-52), p.	Thin. Guaraná, the active
22	suppressant, they	2, ¶ 10 & p. 90 (Att. 7)).	ingredient in Eupepsia
23	knew that		Thin, showed anti-
24	Defendants did not		adipogenic potential due
25	possess any human		to its ability to modulate
26	clinical studies		miRNAs and genes
27	conducted on		related to this process
28	Eupepsia Thin that		(Lima et al., 2017) or an

1	showed Eupepsia		increase in energetic
2	Thin to be an		metabolism and
3	effective appetite		stimulation of
4	suppressant.		mitochondrial biogenesis,
5	195. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	contributing to control of
6	Eunjung Cardiff	p. 19, ¶ 207 (Sanger Dec.	weight gain, even when
7	each admit that	(PX-52), p. 1, ¶ 6 & p. 42	associated with high-fat
8	during the time	(Att. 3)).	diet (Lima et al., 2018).
9	Eupepsia Thin was		Preparations containing
10	being advertised as	E. Cardiff 3rd RFA	guarana in association
11	an effective weight	Resp., p. 16, ¶ 201	with other herbal drugs,
12	loss aid, they knew	(Sanger Dec. (PX-52), p.	are widely used for
13	that Defendants did	2, ¶ 10 & p. 91 (Att. 7)).	weight loss in humans.
14	not possess any		Ex. A, Declaration of
15	human clinical		Jason Cardiff ¶20.
16	studies conducted		
17	on Eupepsia Thin		
18	that showed		
19	Eupepsia Thin to		
20	be an effective		
21	weight loss aid.		
22	196. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
23	Eunjung Cardiff	p. 19, ¶ 209 (Sanger Dec.	
24	each admit that	(PX-52), p. 1, ¶ 6 & p. 24	
25	during the time	(Att. 3)).	
26	Eupepsia Thin was		
27	being advertised as	E. Cardiff 3rd RFA	
28	a clinically proven	Resp., p. 16, ¶ 203	

1	weight loss aid,	(Sanger Dec. (PX-52), p.	
2	they knew that	2, ¶ 10 & p. 91 (Att. 7)).	
3	Defendants did not		
4	possess any human		
5	clinical studies		
6	conducted on		
7	Eupepsia Thin that		
8	showed Eupepsia		
9	Thin to be an		
10	effective weight		
11	loss aid.		
12	FTC Response to SUF 194-196: The Cardiffs admit that during the time		
13	Eupepsia Thin was being advertised as a clinically proven weight loss aid, they		
14	knew that they did not possess any human clinical studies conducted on Eupepsia		
15	Thin proving its efficacy. Their additional narrative and attempt to play experts is		
16	argument and should be disregarded.		
17	197. On March 16, 2017,	Adkinson-Connor Dec.	Admit
18	Eunjung Cardiff	(PX-38), p. 11, ¶ 44 & p.	
19	directed	759 (Att. 20).	
20	Redwood's		
21	account manager at		
22	Cannella to go to		
23	<u>www.thinliferx.co</u>		
24	<u>m</u> to access		
25	"clinical studies"		
26	that purportedly		
27	substantiated		
28	claims in Eupepsia		

1	Thin advertising.		
2	198. On April 7, 2017,	Adkinson-Connor Dec.	Admit
3	Cannella's account	(PX-38), p. 11, ¶ 45 & p.	
4	manager informed	760-761 (Att. 21).	
5	Eunjung Cardiff		
6	that "A&E		
7	networks is asking		
8	if you have		
9	"independent		
10	studies for		
11	Eupepsia," and		
12	Eunjung Cardiff		
13	replied "All the		
14	clinicals are done		
15	on the active		
16	ingredients- there		
17	really isn't		
18	anything more to		
19	test."		
20	199. Jason Cardiff knew	Sands 3rd Dec. (PX-51),	Deny. Deny. Jason
21	that the	p. 3, 17, ¶¶ 9, 50 & p. 38-	Cardiff did not "instruct"
22	testimonialists had	39 (Att. 3).	Ty Sherrell about what to
23	not used Eupepsia		tell the testimonials to
24	Thin to lose		say in Redwood's
25	weight.		television advertising.
26			Cardiff instructed Sherrill
27			to locate individuals who
28			took the products and

1 were willing to provide a
2 testimonial. Ex. A, Jason
3 Cardiff Declaration ¶¶91-
4 94.
5 Deny. The Cardiffs
6 ensured that the
7 testimonials were real
8 and from the person who
9 said them. The Cardiffs
10 had each testimonialist
11 sign a form that indicated
12 that what they were
13 saying was true and
14 based off their own
15 personal experience with
16 the product. Ex. A, Jason
17 Cardiff Declaration ¶¶92-
18 93. The form said: All of
19 the statements made are
20 true and accurate, all of
21 my on-screen
22 representation, of the
23 product [product], are of
24 my own true story. Id. If
25 the testimonialist lied
26 about not using Eupepsia
27 Thin, it was unbeknownst
28 to the Cardiffs.

FTC Response to SUF 199: The Cardiffs’ general denial does not dispute the cited evidence of Jason Cardiff’s February 1, 2017 email acknowledgement, “Love it big time; Ty you are great” in response to an email from Eupepsia Thin infomercial director Ty Sherrell stating: “[I] am working on getting testimonials from people who have already lost weight and I’m getting before pictures for them... they will still have the product and do the testimonials but ill [sic] have before pictures from their past fat lives lol // this is what you pay me for uncle jason, to use my [expletive deleted] brain.”

The Cardiffs also do not dispute that the infomercial was filmed before Eupepsia Thin was first sold to the public. See Dkt. 424-1, p. 13, par. 52. Nor do they dispute the sworn declarations of three testimonialists that they did not use Eupepsia Thin to lose weight. See SUF 166.

200. Jason Cardiff and Eunjung Cardiff instructed staff how to deal with Better Business Bureau complaints.	Carranza Dec. (PX-33), p. 6, ¶ 24.	Deny. This responsibility was Danielle Walker’s. Ex. A, Jason Cardiff Declaration ¶97.
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FTC Response to SUF 200: The Cardiffs do not dispute that they gave instructions to Redwood employee Tracy Carranza on “how to deal with BBB complaints,” but merely claim that this was a responsibility of Danielle Walker.

201. Jason Cardiff and Eunjung Cardiff created the content of the Rengalife website, www.rengalife.	Walker Dec. (PX-32), p. 21, ¶¶ 88, 94-95 & p. 956-979 (Atts. 149-155)..	Object, not a material fact. Defendants ceased developing “Rengalife” in or about July, 2018. Dkt. 253-1 Declaration of Jason Cardiff ¶17.
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1	com, with the		Rengalife was a program that lasted and was advertised for about 45 days. Rengalife was started the end of march and we stopped advertising and the program itself at the beginning of May. Ex. A, Declaration of Jason Cardiff ¶84. No consumers acquired any membership from Rengalife. <i>Id.</i> at ¶85. Rengalife was created in order to create a big word of mouth network to help advertise the products of Redwood because we had stopped television marketing and modified our websites drastically. <i>Id.</i> at ¶86. Rengalife was never an active program. Redwood never made sales or had any customers because market research indicated
2	assistance of		
3	Redwood		
4	employees.		
5	202. Eunjung Cardiff	Walker Dec. (PX-32), p.	
6	came up with the	21, ¶ 94.	
7	name “Rengalife.”		
8	203. Jason Cardiff	Sands 2 nd Dec. Dkt. 277-	
9	promoted	4, p. 3-4, ¶ 7 & p. 13-15	
10	Rengalife using	(Att. 7).	
11	email messages to		
12	consumers who	Walker Dec. (PX-32), p.	
13	had previously	20, ¶ 88 & p. 960 (Att.	
14	purchased	151).	
15	Redwood oral film		
16	strips.		
17	204. Jason Cardiff	Ziolkowski Dec. (PX-	
18	signed Rengalife	49), p. 1-2, ¶¶ 5, 11 & p.	
19	promotional and	3, 4-5, 7-9 (Att. 1, 2, 4, 5)	
20	customer order	(emails signed by Jason	
21	confirmation	Cardiff).	
22	emails, and spoke		
23	directly with		
24	Rengalife members		
25	who had questions		
26	or complaints		
27	about the program.		
28	205. Some of the	Walker Dec. (PX-32), p.	

1 2 3 4 5 6	Rengalife videos were filmed in Redwood's office, and some were filmed in the Cardiffs' home.	20, ¶ 89.	it was not a viable company. Ex. A, Declaration of Jason Cardiff ¶37.
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FTC Response to SUF 201-205: The Cardiffs do not dispute that they conceived of Rengalife, that Eunjung Cardiff chose the name, that Jason Cardiff personally marketed Rengalife and talked to its members, and that some of the Rengalife videos were filmed in the Cardiffs' home.

The cited paragraphs of Jason Cardiff's declaration contain general statements with no evidentiary citations and therefore fail to create a genuine issue of material fact about the specific examples of the Cardiffs' involvement in and control over Rengalife, including the sworn declaration of a Rengalife member who spent over \$1,000 on Rengalife products and who spoke with Jason Cardiff several times and complained to him that he had been overcharged for product.

The facts about the Cardiffs' involvement in creating Rengalife advertising messages are material their individual liability for injunctive and monetary relief.

21 22 23 24 25 26 27 28	206. Jason Cardiff and Eunjung Cardiff had ultimate authority for making all Redwood business decisions, including signing	Walker Dec. (PX-32), p. 3, ¶ 13. Melendez Dec. (PX-35), p. 6-7, ¶ 24 (managers did not have much leeway; Jason and Eunjung Cardiff made all	Deny. Danielle Walker had authority to make decisions on contracts, expenses, advertising, etc. when Jason and Eunjung Cardiff were not readily available, such as when Jason Cardiff
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1	contracts,	the decisions).	traveled and was gone
2	approving		months at a time. Ex. 1,
3	expenses, creating	Wu Dec. (PX-37), p. 3, ¶	Jason Caridff Declaration
4	and approving	14 (Jason Cardiff	¶¶96-97.
5	advertising,	approved all product	
6	placing advertising	claims and had final	
7	on television	approval of all	
8	networks and	advertising).	
9	social media,		
10	opening and	Rodoracio Dec. (PX-36),	
11	managing bank and	p. 1, ¶ 5; p. 5, ¶ 21.	
12	merchant accounts,		
13	and setting and		
14	enforcing company		
15	policies concerning		
16	autoship programs		
17	and customer		
18	refunds.		

FTC Response to SUF 206: The Cardiffs’ general denial does not provide any examples or evidence of Danielle Walker making decisions on “contracts, expenses, or advertising.” See also Dkt. 428-3, p. 2 (“Danielle Cadiz was responsible for making sure people carried out the Cardiffs’ directions”); Dkt. 428-1, p. 2 (“Whenever Danielle told me to do something, I knew it was a directive coming from Jason or Eunjung Cardiff. For my position, everything had to be approved by Jason Cardiff.”).

The Cardiffs cite to Jason Cardiff’s declaration, where he claims that they split time between California and New York but states that they only had an

apartment in New York until “2016 some time.” This general, time-limited statement is unsupported by any evidence of 4-6 week stints in New York and does not address the specific recollections of former Redwood employees for the period after 2016 that Jason Cardiff was in the office nearly every day and Eunjung Cardiff every week. See Dkt. 428-3, p. 2, ¶ 4; Dkt. 428-4, p. 2, ¶ 5; Dkt. 428-1, p. 2, ¶ 6.

C. Corporate Defendants

FTC Fact	FTC Citation	Cardiff Admit/Objection
207. Redwood Scientific Technologies, Inc. (“Redwood California”) is a California corporation that had its principal place of business at 820 N. Mountain Ave., Upland, California 91786 as of October 12, 2018.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 92-93 (Att. 001). Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 50-51, ¶¶ 135-137 & Dkt. 13, p. 168-171 (Atts. 157-159). Walker Dec. (PX-32), p. 2, ¶ 9 & p. 36-40 (Atts. 7-10).	Admit.
208. Redwood California was previously located at 250 W. 1st St., Claremont, CA 91711.	Walker Dec. (PX-32), p. 2, ¶ 9 & p. 37-39 (Atts. 8-9).	Admit.

<p>209. Advanced Men’s Institute Prolongz LLC (“AMI”) was a California limited liability company formed on January 30, 2014 with its principal place of business at 250 W. 1st St., Claremont, CA, 91711.</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 93 (Att. 001).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 58, ¶¶ 160-162 & Dkt. 24-2, p. 5-7 (Att. 181-183).</p> <p>Walker Dec. (PX-32), p. 2, ¶ 9 & p. 32 (Att. 3).</p> <p>Yallen Dec. (PX-40), p. 2, ¶ 6 & p. 74 (Att. 5).</p>	<p>Admit.</p>
<p>210. AMI changed its name to Redwood Scientific Technologies LLC in November 2014.</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 92-93 (Att. 001).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 51, ¶¶ 138-139 & Dkt. 13, p. 172-173 (Atts. 160, 161).</p> <p>Walker Dec. (PX-32), p. 2, ¶ 9 & p. 35 (Att. 6).</p> <p>Yallen Dec. (PX-40), p.</p>	<p>Admit.</p>

		2, ¶ 6 & p. 77 (Att. 5); p. 125 (Att. 6).	
211.	Redwood Scientific Technologies, LLC then converted to the corporate form, Redwood Scientific Technologies, Inc. (“Redwood California”).	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 92-93 (Att. 001). Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 51, ¶¶ 138-139 & Dkt. 13, p. 172-173 (Att. 160, 161). Walker Dec. (PX-32), p. 2, ¶ 9 & p. 36 (Att. 7). Yallen Dec. (PX-40), p. 2, ¶ 6 & p. 78-80 (Att. 5); p. 125 (Att. 6)	Admit.
212.	Redwood Scientific Technologies, Inc. (“Redwood Nevada”) was incorporated in Nevada in December 2014.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 51, ¶ 140 & Dkt. 13, p. 174 – Dkt. 13-1, p. 4 (Att. 162). Walker Dec. (PX-32), p. 2, ¶ 9 & p. 41 (Att. 11).	Admit.
213.	In response to the Commission’s Civil Investigative	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 94-95 (Att.	Admit.

1	Demand, Redwood	001).	
2	California stated on		
3	April 4, 2018 that it		
4	was a wholly-		
5	owned subsidiary of		
6	Redwood Nevada.		
7	214. The Nevada	Sands 1st Dec. (TRO PX-	Admit.
8	Secretary of State	1), Dkt. 7, p. 51, ¶¶ 140-	
9	listed 250 W. 1st	141 & Dkt. 13, p. 174 –	
10	St., Claremont,	Dkt. 13-1, p. 6 (Att. 162-	
11	#310, California	163).	
12	91711, as the		
13	address for all		
14	Redwood Nevada		
15	officers and		
16	directors.		
17	215. Redwood California	Sands 1st Dec. (TRO PX-	Admit.
18	acquired Redwood	1), Dkt. 7,	
19	California through a	p. 51, ¶ 142 & Dkt. 13-1,	
20	“share exchange”	p. 13 (Att. 164).	
21	on January 6, 2015.		
22	216. As of March 27,	Sands 1st Dec. (TRO PX-	Admit.
23	2018, Defendants	1), Dkt. 7, p. 63-64, ¶ 182	
24	were still using	& Dkt. 25-2, p. 27 – Dkt.	
25	Redwood Nevada to	25-3, p. 6 (Att. 346).	
26	raise money for		
27	their operations.		
28	217. On December 29,	Sands 1st Dec. (TRO PX-	Admit.

1	2017, Redwood	1), Dkt. 7, p. 51-52, ¶ 143	
2	Nevada merged into	& Dkt. 13-1, p. 109 (Att.	
3	an existing	165).	
4	Delaware		
5	corporation,	Walker Dec. (PX-32), p.	
6	Greenway Design	2, ¶ 9 & p. 150 (Att. 14).	
7	Group, Inc., and		
8	changed its name to		
9	Redwood Scientific		
10	Technologies, Inc.,		
11	a Delaware		
12	corporation.		
13	218. Redwood Scientific	Sands 1st Dec. (TRO PX-	Admit.
14	Technologies, Inc.	1), Dkt. 7, p. 52-53, ¶ 147	
15	("Redwood	& Dkt. 13-1, p. 133 (Att.	
16	Delaware") is a	169).	
17	Delaware		
18	corporation with its		
19	principal place of		
20	business at 820 N.		
21	Mountain Ave.,		
22	Upland, California		
23	91786.		
24	219. Disclosure	Sands 1st Dec. (TRO PX-	Admit.
25	documents filed by	1), Dkt. 7, p. 52-53, ¶ 147	
26	Redwood Delaware	& Dkt. 13-1, p. 133, 144-	
27	identified the	145 (Att. 169). As noted	
28	Cardiffs as owners	in Sands 1st Dec. (TRO	

1	of nearly 97% of	PX-1), Dkt. 7, p. 52-35, ¶	
2	Redwood Delaware,	147, the disclosure	
3	with their	document contains	
4	ownership shares	hidden text, which is only	
5	titled under Carols	viewable if the text is	
6	Place Limited	highlighted and then	
7	Partnership and	copy-and-pasted into a	
8	True and Honesty,	separate document.	
9	LLC.		
10	220. True and Honesty,	Sands 1st Dec. (TRO PX-	Admit.
11	LLC is a Wyoming	1), Dkt. 7, p. 53-54, ¶¶	
12	entity created in	149-150 & Dkt. 13-1, p.	
13	2017.	151-154 (Att. 170); Dkt.	
14		24, p. 2-3 (Att. 171).	
15	221. Run Away	Sands 1st Dec. (TRO PX-	Admit.
16	Products, LLC	1), Dkt. 7, p. 58-59, ¶ 163	
17	("Run Away") is a	& Dkt. 24-2, p. 8-9	
18	New York limited	(Att. 184).	
19	liability company		
20	formed on March	Yallen Dec. (PX-40), p.	
21	10, 2009.	1, 2, ¶¶ 5, 6 & p. 72 (Att.	
22		4); p. 81-83 (Att. 6).	
23	222. Run Away was	Yallen Dec. (PX-40), p.	Admit.
24	registered in	2, ¶ 6 & p.	
25	California as a	72 (Att. 4).	
26	foreign Limited		
27	Liabilty Company		
28	in November 2011.		

1	223. Run Away's	Sands 1st Dec. (TRO PX-	
2	California address	1), Dkt. 7, p. 59, ¶ 164 &	
3	as of March 2014	Dkt. 24-2, p. 10-11 (Att.	
4	was 250 W. 1st St.,	185).	
5	Claremont, CA,		
6	91711.	Yallen Dec. (PX-40), p.	
7		2, ¶ 6 & p. 72 (Att. 4).	
8	224. Run Away is the	Sands 1st Dec. (TRO PX-	Admit.
9	manager of AMI.	1), Dkt. 7, p. 58, ¶ 162 &	
10		Dkt. 24-2, p. 7 (Att. 183).	
11			
12		Walker Dec. (PX-32), p.	
13		2, ¶ 9 & p. 34 (Att. 5).	
14			
15		Yallen Dec. (PX-40), p.	
16		2-3, ¶¶ 6, 13 & p. 7 (Att.	
17		5); p. 127 (Att. 6).	
18	225. Identify LLC is a	Walker Dec. (PX-32), p.	Admit.
19	Wyoming limited	3, ¶ 11 & p. 194-197	
20	liability company.	(Atts. 19-20).	
21	226. Carols Place	Sands 1st Dec. (TRO PX-	Admit.
22	Limited Partnership	1), Dkt. 7, p. 59, ¶ 166 &	
23	is an Arizona asset	Dkt. 24-3, p. 1 (Att. 187).	
24	management		
25	limited partnership		
26	formed on January		
27	23, 2017.		
28	227. Carols Place	Sands 1st Dec. (TRO PX-	Admit.

1	Limited Partnership	1), Dkt. 7, p. 52, ¶ 146 &	
2	owns 66% of	Dkt. 13-1, p. 118 (Att.	
3	Redwood Nevada's	168).	
4	stock.		
5	228. Carols Place	Sands 1st Dec. (TRO PX-	Admit.
6	Limited Partnership	1), Dkt. 7, p. 52-53, ¶¶	
7	holds 99.9% of	147-148 & Dkt. 13-1, p.	
8	Jason and Eunjung	133, 144-145 (Att. 169).	
9	Cardiff's common		
10	shares in Redwood		
11	Delaware.		
12	229. The two partners of	Sands 1st Dec. (TRO PX-	Admit.
13	Carols Place	1), Dkt. 7, p. 61, ¶ 173 &	
14	Limited Partnership	Dkt. 24-9, p. 3-5 (Att.	
15	are Carols Place	196).	
16	Trust and Extension		
17	First, LLC.		
18	230. Extension First,	Sands 1st Dec. (TRO PX-	Admit.
19	LLC is a Wyoming	1), Dkt. 7, p. 59-60, ¶ 167	
20	limited liability	& Dkt. 24-3, p. 2-5 (Att.	
21	company formed on	188).	
22	January 13, 2017.		
23	231. Jason Cardiff and	Sands 1st Dec. (TRO PX-	Admit.
24	Eunjung Cardiff are	1), Dkt. 7, p. 61, ¶ 173 &	
25	the members of	Dkt. 24-9, p. 3 (Att. 196).	
26	Extension First,		
27	LLC.		
28	232. As of October 12,	Order Denying	Admit, however the sales

1	2018, Defendants	Defendants' Motion For	did not violate the FTC
2	were still selling	Relief From Preliminary	Act as set out in
3	TBX-FREE,	Injunction, p. 4-5 (Dkt.	Defendants brief.
4	Eupepsia Thin, and	305).	
5	Prolongz.		
6		Kane Dec., Dkt. 277-1, p.	
7		2-3, ¶¶ 2-7 (Temporary	
8		Receiver found ongoing	
9		business and large	
10		amounts of inventory	
11		when immediate access	
12		was executed on October	
13		12, 2018).	
14			
15		Garcia Dec. p. 4-5, ¶ 17	
16		& p. 20, 27 (Att. 7) (sale	
17		made on October 12,	
18		2018).	
19			
20		See also Walker Dec.	
21		(PX-32), p. 21-22, ¶ 98	
22		(still selling Prolongz,	
23		TBX-FREE, and	
24		Eupepsia Thin as of July	
25		2018).	
26	FTC Response to SUF 232: The Cardiffs admit that as of October 12, 2018,		
27	Defendants were still selling TBX-FREE, Eupepsia Thin, and Prolongz. The		
28	remaining narrative should be disregarded as argument.		

1	233. Jason Cardiff and	Dkt. 265-2 (Declaration	Admit.
2	Eunjung Cardiff	of Jason Cardiff	
3	both stated in sworn	Regarding Motion to	
4	declarations that	Dissolve Preliminary	
5	“Redwood was in	Injunction), p. 2, ¶ 5.	
6	the business of		
7	marketing several	Dkt. 265-3 (Declaration	
8	different	of Eunjung Cardiff	
9	homeopathic	Regarding Motion to	
10	dissolvable thin-	Dissolve Preliminary	
11	film strip products;	Injunction), p. 2-3, ¶ 5.	
12	a stop smoking aid		
13	(TBX-FREE), an		
14	appetite suppressant		
15	(Eupepsia Thin),		
16	and a men’s sexual		
17	performance		
18	product		
19	(Prolongz).”		
20	234. Jason Cardiff and	Dkt. 265-2 (Declaration	Admit.
21	Eunjung Cardiff	of Jason Cardiff	
22	both stated in sworn	Regarding Motion to	
23	declarations that	Dissolve Preliminary	
24	“Redwood	Injunction), p. 3, ¶ 7.	
25	marketed its		
26	products to	Dkt. 265-3 (Declaration	
27	consumers	of Eunjung Cardiff	
28	primarily by	Regarding Motion to	

1	creating and	Dissolve Preliminary	
2	running info-	Injunction), p. 3, ¶ 7.	
3	commercials on		
4	television stations		
5	in selected markets		
6	in the U.S. by		
7	contracting with		
8	outside paid		
9	marketing media,		
10	companies to place		
11	the ads on TV		
12	stations.”		

D. Common Enterprise

15	FTC Fact	FTC Citation	Cardiff
16			Admit/Objection
17	235. Corporate	Sands 1st Dec. (TRO PX-	Admit.
18	Defendants	1), Dkt. 7, p. 51, ¶ 142 &	
19	Redwood Nevada,	Dkt. 13-1, p. 7 (Att. 164)	
20	Redwood	(Redwood Nevada).	
21	California, AMI,		
22	and Run Away	Sands 1st Dec. (TRO PX-	
23	shared space at 250	1), Dkt. 7, p. 50, ¶¶ 135-	
24	W. 1 st St.,	136 & Dkt. 13, p. 168-	
25	Claremont, CA.	169 (Atts. 157-158)	
26		(Redwood California).	
27			
28		Sands 1st Dec. (TRO PX-	

		1), Dkt. 7, p. 58, ¶¶ 160-162 & Dkt. 24-2 p. 5-7 (Atts. 181-183) (AMI).	
		Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 59, ¶ 164 & Dkt. 24-2, p. 10 (Att. 185) (Run Away).	
236. Redwood		Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 51, ¶ 137 & Dkt. 13, p. 170 (Att. 159) (Redwood California).	Admit.
California,			
Redwood			
Delaware, Identify,			
AMI, and Run			
Away shared a		Sands 1 st Dec. (TRO PX-1), Dkt. 7, p. 52-53, ¶ 147 & Dkt. 13-1, p. 133 (Att. 169) (Redwood Delaware)	
common space at			
820 North			
Mountain Ave.,			
Upland, CA 91786.			
		Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 55, ¶ 155 & Dkt. 24, p. 17 (Att. 176) (Identify).	
		Sands 1 st Dec. (TRO PX-1), Dkt. 7, p. 62, ¶ 178 & Dkt. 22, p. 92, 105 (Att. 236, 237) (Run Away).	

	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 63, ¶ 181 & Dkt. 23, p. 49 (Att. 280) (AMI).	
237. Corporate Defendants AMI, Run Away, Redwood California, and Identify all participated in advertising TBX-FREE, Eupepsia Thin, and Prolongz.	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 7-9, ¶¶ 19-22 & Dkt. 10, p. 76-79 (Atts. 031-032) (Redwood).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 51, ¶ 142 & Dkt. 13-1, p. 7, 97 (Att. 164) (“Runaway Products . . . purchases media for” Redwood).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 63, ¶ 181 & Dkt. 23, p. 60-69 (Atts. 281-286) (AMI, Run Away).</p> <p>George Dec. (TRO PX-2), Dkt. 6, p. 5-6, ¶ 12 (Redwood, Identify, Run Away).</p>	Admit.

1	238. AMI, Run Away,	Sands 1st Dec. (TRO PX-	Admit.
2	Redwood	1), Dkt. 7, p. 34-35, ¶ 104	
3	California, and	& Dkt. 13, p. 22-23 (Att.	
4	Identify all applied	115) (Run Away, AMI,	
5	for and obtained	and Redwood); Dkt. 7, p.	
6	merchant accounts	62, ¶ 176 & Dkt. 24-11,	
7	to process	p. 15 – Dkt. 24-12, p. 6,	
8	payments for TBX-	(Att. 207) (Redwood);	
9	FREE, Eupepsia	Dkt. 7, p. 62, ¶ 177 &	
10	Thin, and	Dkt. 24-13, p. 5, (Att.	
11	Prolongz.	213) (Identify).	
12			
13		George Dec. (TRO PX-	
14		2), Dkt. 6, p. 3-4, ¶ 9.	
15	239. Identify, Redwood	Walker Dec. (PX-32), p.	Admit.
16	Scientific	11, ¶ 49 & p. 622-656	
17	Technologies, Run	(Atts. 68-82).	
18	Away, and AMI all		
19	participated, as	George Dec. (TRO PX-	
20	buyers or	2), Dkt. 6, p. 5-6, ¶ 12.	
21	consignees, in		
22	purchasing oral	See also Sands 1st Dec.	
23	film strips from	(TRO PX-1), Dkt. 7, p.	
24	Defendants’	63, ¶ 181 & Dkt. 23, p.	
25	Chinese and Indian	72-77 (Atts. 289-291).	
26	suppliers.		
27	240. In March 2018,	Sands 1st Dec. (TRO PX-	Admit.
28	Jason Cardiff	1), Dkt. 7, p. 63, ¶ 181 &	

1	signed as President	Dkt. 23, p. 70-71 (Atts.	
2	of Identify LLC a	287-288).	
3	statement attesting		
4	that:	Walker Dec. (PX-32), p.	
5	IT IS HEREBY	11-12, ¶ 51 & p. 64 (Att.	
6	DECLARED	81).	
7	THAT THE		
8	FOLLOWING	Sands 3rd Dec. (PX-51),	
9	COMPANIES	p. 3, ¶ 9 & p. 77 (Att.	
10	ARE OUR	23).	
11	GROUP OF		
12	COMPANIES		
13	(OUR SISTER		
14	CONCERN		
15	COMPANIES):		
16	I. IDENTIFY		
17	LLC		
18	II.		
19	REDWOOD		
20	SCIENTIFIC		
21	III.		
22	TECHNOLOG		
23	IES, INC		
24	RUN AWAY		
25	PRODUCTS		
26	LLC		
27	IV.		
28	ADVANCE		
	[sic] MENS		
	INSTITUT		
	E		
	241. Because Redwood	Walker Dec. (PX-32), p.	Object as irrelevant.

1	used so many	11-12, ¶ 51 & p. 653	Whether one company
2	different company	(Att. 80).	confused the Corporate
3	names to order and		Defendants does not
4	pay for the oral		matter.
5	strips, Aavishkar,		
6	the Indian		
7	company that		
8	manufactured some		
9	of Redwood's oral		
10	film strips, had		
11	requested a signed		
12	statement		
13	clarifying that all		
14	of the companies		
15	whose names		
16	appeared on		
17	invoices were		
18	related.		

FTC Response to SUF 241: The Cardiffs do not dispute that Aavishkar, the Indian supplier of some of their film strips, requested a signed statement that various Cardiff corporate entities whose names appeared on invoices were related.

The Cardiffs' relevance objection incorrectly suggests that Aavishkar was confused about the Corporate Defendants. In fact Aavishkar's request clearly states that it was the supplier's bank that was requesting the declaration because "the Invoicing is in the name of Identify LLC, but the payment is [coming] from various accounts." Dkt 426-1, p. 70.

SUF 241 is relevant to the Commission’s allegation that the Corporate Defendants operated as a common enterprise.

242. Eunjung Cardiff asked Redwood’s Director of Operations for confirmation that the certification had been sent to Aavishkar.	Walker Dec. (PX-32), p. 11-12, ¶ 51 & p. 655-656 (Att. 82).	Object as to relevance as well as vague. Unclear what certification is referring to, and thus cannot admit nor deny.
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FTC Response to SUF 242: The Cardiffs do not dispute that Eunjung Cardiff asked Redwood’s Director of Operations to confirm that Aavishkar had received the certification it had requested.

SUF 242 is not vague, as the certification Eunjung Cardiff wanted to be sure had been sent to Aavishkar is clearly the one requested by the supplier. In fact, Eunjung Cardiff’s question to her Director of Operations “Did you take care of this?” is in the same email chain as Aavishkar’s original request. Dkt. 426-1, p. 72.

SUF 242 is relevant to the Commission’s allegation that the Corporate Defendants operated as a common enterprise and the Cardiffs’ “cannot admit or deny” response ” is the functional equivalent of not disputing the fact.

243. Danielle Walker worked for Jason Cardiff from 2010 to 2018.	Walker Dec. (PX-32), p. 1, ¶ 5.	Admit
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1	244. Eunjung Cardiff	Walker Dec. (PX-32), p.	Admit
2	joined the business	1 ¶ 5.	
3	in 2011.		
4	245. In 2014, Run Away	Walker Dec. (PX-32), p.	Admit
5	Products usually	2, ¶ 7.	
6	paid for goods and		
7	services using bank		
8	accounts in the		
9	name of Advanced		
10	Men's Institute		
11	Prolongz, LLC.		
12	246. Jason Cardiff and	Walker Dec. (PX-32), p.	Objection, vague.
13	Eunjung Cardiff	2, ¶ 7.	However, Eunjung
14	also used bank		Cardiff used different
15	accounts belonging		bank accounts to ensure
16	to Identify, People		that her employees were
17	United For		getting. Ex. 2, Eunjung
18	Christians, and TV		Declaration ¶40.
19	Sales to meet		
20	operational costs.		
21	FTC Response to SUF 246: The Cardiffs do not dispute that they used bank		
22	accounts belonging to Identify, People United For Christians, and TV Sales to		
23	meet operational costs.		
24			
25	The Cardiffs do not specify what in SUF 246 is supposedly vague, and they		
26	admit that Eunjung Cardiff used various bank accounts for payroll expenditures.		
27	247. The Cardiffs	Walker Dec. (PX-32), p.	Admit
28	continued using the	2-3, ¶ 10.	

1	AMI name to		
2	purchase oral film		
3	strips from Chinese		
4	and Indian		
5	manufacturers,		
6	even after AMI		
7	changed its name		
8	to Redwood		
9	Scientific		
10	Technologies,		
11	LLC, and then to		
12	Redwood		
13	Scientific		
14	Technologies, Inc.		
15	248. The Cardiffs	Walker Dec. (PX-32), p.	Deny as to any
16	continued using the	2-3, ¶ 10.	insinuation that over the
17	AMI name to		counter homeopathic
18	purchase oral film		drugs needed registration
19	strips from Chinese		with the US FDA.
20	and Indian		
21	manufacturers		
22	because AMI had		
23	been used to		
24	register the film		
25	strips as		
26	unapproved		
27	homeopathic drugs		
28	with the U.S. Food		

1	and Drug		
2	Administration.		
3	FTC Response to SUF 248: The Cardiffs do not dispute that they continued to		
4	use AMI’s name to purchase oral film strips from Indian and Chinese suppliers		
5	because AMI had been used to register the strips as unapproved homeopathic		
6	drugs with U.S. Food and Drug Administration.		
7	249. Redwood	Walker Dec. (PX-32), p.	Deny, only Redwood
8	(California),	2, ¶ 9.	California did marketing.
9	Redwood		
10	(Nevada), and		
11	Redwood		
12	(Delaware) were		
13	“all a single		
14	business operation		
15	marketing oral film		
16	strips.”		
17	FTC Response to SUF 249: The Cardiffs provide no evidence – not even a		
18	citation to a declaration – as support for their denial of SUF 249, nor do they		
19	explain the distinct functions the three different entities that shared the Redwood		
20	Scientific Technologies name (CA, NV, DE) supposedly performed.		
21	Accordingly, they have not established a genuine dispute of material fact.		
22			
23	Furthermore, their denial takes a single word in SUF 249 – “marketing” – out of		
24	context, rather than address the actual fact set forth above: that the three		
25	Redwood entities “were ‘all a single business operation marketing oral film		
26	strips.”		
27			
28	Finally, the Cardiffs’ denial is contradicted by their admission of SUF 274:		

“Defendants Run Away, AMI, Redwood California, Redwood Nevada, and Redwood Delaware marketed at least the following oral thin film products: TBX-FREE, Eupepsia Thin, Prolongz....” Dkt. 491-1, p. 12.

250. Regardless of the corporate name being used, Danielle Walker and other employees always followed the Cardiffs’ orders.	Walker Dec. (PX-32), p. 3, ¶ 13.	Deny as to overly broad and vague. Deny[] Jason Cardiff was gone for months at a time and Danielle Walker was in charge of all day to day operations and major decisions. Ex. A, Declaration of Jason Cardiff ¶¶96-97.
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FTC Response to SUF 250: The Cardiffs’ general denial fails to specify or provide documentation for their assertion that they were “gone for months at a time,” and their assertion that “Danielle Walker was in charge of all day to day operations and major decisions” is contradicted by detailed sworn declarations of former Redwood employees identifying Jason and Eunjung Cardiff as the ultimate decisionmakers for important business decisions. See Dkt. 428-3, p. 2 (“Danielle Cadiz was responsible for making sure people carried out the Cardiffs’ directions”); Dkt. 428-1, p. 2 (“Whenever Danielle told me to do something, I knew it was a directive coming from Jason or Eunjung Cardiff. For my position, everything had to be approved by Jason Cardiff.”).

251. Redwood employees sometimes received their salary from People	Melendez Dec. (PX-35), p. 1, ¶ 5 (Run Away and People United for Christians).	Objection, vague. However, Eunjung Cardiff used different bank accounts to ensure that her employees were
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1 2 3 4 5 6 7 8 9 10 11 12 13	United for Christians, Run Away Products, or TV Sales.	Garcia Dec. (PX-34), p. 4, ¶ 14 & p. 18-19 (Att. 5, 6) (she was paid from bank accounts for People United for Christians and TV Sales, as well as Redwood). Carranza Dec. (PX-33), p. 1, ¶ 7. Rodoracio Dec. (PX-36), p. 1, ¶ 3.	getting paid and would reconcile them at a different time. Ex. 2, Eunjung Declaration ¶40.
14 15 16 17 18 19 20	<p>FTC Response to SUF 251: The Cardiffs do not dispute that Redwood employees sometimes received their salary from People United for Christians, Run Away Products.</p> <p>The Cardiffs do not specify what in SUF 251 is supposedly vague, and they admit that Eunjung Cardiff would pay Redwood employees' salaries from other bank accounts, and then move money between those accounts to reconcile them.</p>		
21 22 23 24 25 26 27 28	252. People United for Christians used space in the same office as Redwood's warehouse and shipping operations.	Melendez Dec. (PX-35), p. 1, ¶ 6.	Not a material fact. People United for Christians is not a Defendant in this lawsuit and did not sell, market, or have any affiliation with any of the products sold or marketed by

		Redwood.
<p>FTC Response to SUF 252: The Cardiffs do not dispute that People United for Christians used space in the same office as Redwood’s warehouse and shipping operations.</p>		
<p>253. Some employees split their time between working on mailings for People United for Christians and working in the Redwood call center.</p>	<p>Melendez Dec. (PX-35), p. 1, ¶ 6.</p>	<p>Deny. Red and People United for Christians had two separate payrolls. There were no employees working on both mailings. Ex. A, Declaration of Jason Cardiff ¶123.</p>
<p>FTC Response to SUF 253: The Cardiffs do not deny that some employees split their time working for both People United for Christians and Redwood. Furthermore, their denial assumes an assertion different than what is actually stated in SUF 253: they assume it says there was only one payroll and employees who worked on mailings for People United for Christians also worked on mailings for Redwood.</p>		
<p>254. Jason Cardiff used Identify as an umbrella under which he registered the names “Redwood Scientific Technologies,” “Runaway</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 56-58, ¶¶ 158-159 & Dkt. 24, p. 23-28; Dkt. 24-1, p. 1, 4-7; Dkt. 24-2, p. 2-4 (Atts. 179-180). Walker Dec. (PX-32), p. 3, ¶ 11 & p. 202-230</p>	<p>Admit.</p>

1	Products,”	(Att. 23); p. 231-233	
2	“Advanced Men’s	(Att. 24).	
3	Institute,” and		
4	“TBX-FREE” as		
5	Identify’s trade		
6	names.		
7	255. The Cardiffs started	Walker Dec. (PX-32), p.	Admit.
8	using the name	3, ¶ 11 & p. 194-233	
9	Identify, LLC in	(Atts. 19-24).	
10	early 2017 but the		
11	business of selling		
12	oral film strips		
13	remained the same.		
14	256. The Cardiffs jointly	Sands 1st Dec. (TRO PX-	Deny, Jason Cardiff had
15	controlled	1), Dkt. 7, p. 50-51, ¶¶	control over Redwood.
16	Redwood	136-137 & Dkt. 13, p.	Ex. B, Eunjung Cardiff
17	California, with	169-170 (Atts. 158-159);	Declaration ¶2.
18	Jason Cardiff as its	Sands 1st Dec. (TRO PX-	
19	CEO and Director,	1), Dkt. 7, p. 62, ¶ 178 &	
20	and Eunjung	Dkt. 22, p. 15-16 (Att.	
21	Cardiff as	242).	
22	Secretary, Director,		
23	and Chief	Morris Dec. (TRO PX-4),	
24	Operating Officer.	Dkt. 9, p. 3, ¶ 5 & Dkt. 9,	
25		p. 11-16 (Att. B).	
26	FTC Response to SUF 256: The Cardiffs do not provide any basis for their		
27	denial of SUF 256, as Paragraph 2 of Eunjung Cardiff’s Declaration says in its		
28	entirety that “When my husband and I formed Redwood in 2014, the intent was		

to introduce the use of dissolvable, ingestible thin film strip technology as an easy to use delivery method for over the counter every day medications for those who had challenges with traditional methods of medication ingestion.” Dkt. 491-4, p. 2.

257. The Cardiffs control Carols Place Limited Partnership through their interests in both Carols Place Trust and Extension First, LLC.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 61, ¶ 173 & Dkt. 24-9, p. 3-5 (Att. 196).	Admit.
258. Defendants maintained bank accounts in the name of Identify, LLC.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 63, ¶ 181 & Dkt. 23, p. 118-119 (Att. 297). George Dec. (TRO PX-2), Dkt. 2, p. 2, ¶ 4 & p. 13 (Att. A1).	Admit.
259. Redwood California, Identify, Run Away and AMI all paid suppliers, advertising agencies, and	George Dec. (TRO PX-2), Dkt. 2, p. 5-7, ¶¶ 12-13. Walker Dec. (PX-32), p. 7, ¶ 27 (AMI paid for Run Away ad expenses);	Admit.

1	payment	p. 10, ¶ 40 (Eunjung	
2	processing	Cardiff charged expenses	
3	companies.	for Facebook ads on an	
4		American Express card in	
5		the name of Run Away,	
6		and paid the card from	
7		Redwood funds); p. 11, ¶	
8		49 & p. 622-643 (Atts.	
9		68-76) (supplier invoices	
10		in multiple names); p. 19,	
11		¶ 84 & p. 931-943 (Att.	
12		145) (Eunjung Cardiff	
13		charged Redwood	
14		robocall expenses on an	
15		American Express card in	
16		the name of AMI).	
17	260. At various times,	Walker Dec. (PX-32),	Admit.
18	Redwood, Run	p.11, ¶ 49 & p. 622-643	
19	Away Products,	(Atts. 68-76) (supplier	
20	Advanced Men's	invoices in multiple	
21	Institute Prolongz,	names).	
22	and Identify		
23	purchased film	George Dec. (TRO PX-	
24	strips from Chinese	2), Dkt. 2, p. 5-6, ¶ 12	
25	and Indian	(Redwood, Identify, and	
26	manufacturers.	Run Away).	
27	261. Jason and Eunjung	George Dec. (TRO PX-	Admit.
28	Cardiff maintained	2), Dkt. 2, p. 2, ¶ 4 & p.	

multiple credit card accounts in their names and the names of Corporate Defendants.	17 (Att. B).	
262. In July 2017, Run Away Products paid Inter/Media \$64,712.	George Dec. (TRO PX-2), Dkt. 2, p. 5-6, ¶ 12.	Admit.
263. Redwood California payroll was paid from an Identify bank account as late as June 2018.	George Dec. (TRO PX-2), Dkt. 6, p. 6-7, ¶ 13. Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 63, ¶ 181 & Dkt. 23, p. 91-113 (Att. 295) (Redwood payroll documents show payment from account “XXXXXX4462,” an Identify account).	Admit.
264. Between April 2015 and May 2018, Corporate Defendants transferred \$3.97 million between themselves.	George Dec. (TRO PX-2), Dkt. 2, p. 4-5, ¶ 10 & p. 18-19 (Att. C).	Admit.

1	265. In connection with	Yallen Dec. (PX-40), p.	Admit.
2	the Inter/Media	2-3, 5-6, ¶¶ 10, 16(E) &	
3	Insertion Order,	p. 15-30 (Att. 2); p. 137	
4	Jason Cardiff	(Att. 7).	
5	signed a		
6	Continuing	Sands 1st Dec. (TRO PX-	
7	Guaranty of	1), Dkt. 7, p. 61, ¶ 174 &	
8	Payment and	Dkt. 24-9, p. 28 – Dkt.	
9	Performance on	24-10, p. 14 (Att. 200).	
10	March 18, 2014.		
11	266. By signing the	Yallen Dec. (PX-40), p.	Admit.
12	Continuing	2-4, ¶¶ 10, 14(c) & p. 15,	
13	Guaranty of	30 (Att. 2); p. 137 (Att.	
14	Payment and	7).	
15	Performance, Jason		
16	Cardiff personally	Sands 1st Dec. (TRO PX-	
17	guaranteed	1), Dkt. 7, p. 61, ¶ 174 &	
18	payment for the	Dkt. 24-9, p. 28 – Dkt.	
19	services	24-10, p. 14 (Att. 200).	
20	Inter/Media would		
21	provide Run Away		
22	Products, LLC for		
23	advertising		
24	Prolongz.		
25	267. Eunjung Cardiff	Yallen Dec. (PX-40), p.	Admit.
26	consented to Jason	2-4, ¶¶ 10, 14(c) & p. 15,	
27	Cardiff's personal	30 (Att. 2); p. 134, 137	
28	guaranty of	(Att. 7).	

1	payment to		
2	Inter/Media for		
3	Prolongz		
4	advertising		
5	services.		
6	268. Run Away did not	Yallen Dec. (PX-40), p.	Admit.
7	pay in full for	3, ¶ 11 & p. 61-66 (Att.	
8	Inter/Media's	3).	
9	services.		
10	269. Inter/Media filed a	Yallen Dec. (PX-40), p.	Admit.
11	complaint naming	3, ¶ 12.	
12	named Run Away,		
13	Advanced Men's	Szymanski Dec. (PX-39),	
14	Institute Prolongz,	p. 5, ¶ 25.	
15	LLC, Redwood		
16	Scientific		
17	Technologies,		
18	LLC, Jason		
19	Cardiff, Eunjung		
20	Cardiff, and Doe		
21	defendants after		
22	resolution could		
23	not be reached on		
24	payment for		
25	Prolongz		
26	advertising.		
27	270. In the course of that	Yallen Dec. (PX-40), p.	The Order speaks for
28	litigation, the	3-4, ¶ 14 & p. 136-137	itself.

1	Judge entered a	(Att. 7).	
2	discovery sanctions		
3	order containing		
4	specific findings		
5	concerning		
6	Prolongz		
7	advertising.		
8	271. The Judge's	Yallen Dec. (PX-40), p.	
9	discovery sanctions	3-4, ¶ 14 & p. 137 (Att.	
10	order included a	7).	
11	finding that		
12	"Defendant Jason		
13	Cardiff fully		
14	guaranteed the		
15	2015 contract		
16	obligations of the		
17	Defendant Run		
18	Away Product,		
19	LLC to Plaintiff,		
20	and his spouse,		
21	Defendant Eunjung		
22	Cardiff, aka		
23	Eunjung No, fully		
24	acknowledged and		
25	consented to said		
26	guarantee" and		
27	"Defendant Run		
28	Away Products,		

1	LLC is the legal		
2	alter ego of		
3	Defendant		
4	Redwood		
5	Scientific		
6	Technologies, Inc.,		
7	formerly known as		
8	Redwood		
9	Scientific		
10	Technologies,		
11	LLC, formerly		
12	known as		
13	Advanced Men's		
14	Institute Prolongz,		
15	LLC."		
16	FTC Response to SUF 270-271: The Cardiffs do not dispute SUF 270-271.		
17	272. Jason Cardiff and	Yallen Dec. (PX-40), p.	Admit
18	Eunjung Cardiff	4, ¶ 15 & p. 140-162	
19	signed a Settlement	(Att. 8).	
20	Agreement		
21	resolving the		
22	litigation with		
23	Inter/Media in		
24	March, 2017.		
25	273. By signing the	Yallen Dec. (PX-40), p.	The Order speaks for
26	Settlement	5, ¶ 16(C) & p. 140-141,	itself
27	Agreement, Jason	Recital C (Att. 8).	
28	Cardiff and		

Eunjung Cardiff
agreed to the
recitals it
contained,
including the
following:
“Run Away
Products, LLC
 (“Run Away”) is a
New York limited
liability company
that at times did
business under the
name “Prolongz”,
Advanced Men’s
Institute Prolongz,
LLC is a California
limited liability,
Redwood
Scientific
Technologies, LLC
is a California
LLC, Redwood
Scientific
Technologies, Inc.
is a Nevada
Corporation and a
successor to

Advanced Men's
Institute Prolongz,
LLC and Redwood
Scientific
Technologies,
LLC. Additionally,
there is Redwood
Scientific
Technologies, Inc.,
a California
corporation. These
companies were
involved in the
marketing and
sales of
"Prolongz", a sex
product that
purports to assist in
the slowing or
delaying of male
ejaculation during
sexual intercourse.
Eunjung Cardiff
aka Eunjung No
aka Eunjung Lee
and Jason Cardiff
are officers and/or
directors and/or

1	managers and/or		
2	owners of the legal		
3	entities described		
4	in this recital. All		
5	of the entities		
6	referred to in this		
7	recital are affiliated		
8	with Eunjung		
9	Cardiff aka		
10	Eunjung No aka		
11	Eunjung Lee and		
12	Jason Cardiff. . .”		

FTC Response to SUF 273: The Cardiffs do not dispute SUF 273.

14	274. Defendants Run	Sands 1st Dec. (TRO PX-	Admit
15	Away, AMI,	1), Dkt. 7, p. 52-53, ¶ 147	
16	Redwood	& Dkt. 13-1	
17	California,	p. 133, 136-137 (Att.	
18	Redwood Nevada,	169).	
19	and Redwood		
20	Delaware marketed	Walker Dec. (PX-32), p.	
21	at least the	5, ¶ 20 & p. 167, 170	
22	following oral thin	(Att. 16) (AMI, Redwood	
23	film products:	Nevada, and Redwood	
24	TBX-FREE,	Delaware’s marketing of	
25	Eupepsia Thin,	all products); p. 21-22, ¶	
26	Prolongz,	98 (in July 2018,	
27	Prolongz-X (a	Redwood was selling	
28	stronger version of	Cloverstrips, as well as	

1	Prolongz), Product-	its other oral film strips).	
2	X (for erectile		
3	dysfunction, not	Adkinson-Connor Dec.	
4	premature	(PX-38), p. 7, ¶ 30	
5	ejaculation like	(Redwood Nevada's	
6	Prolongz),	marketing of TBX-	
7	Provaxaltonin (for	FREE, Eupepsia Thin,	
8	enhancing mood	Prolongz, and	
9	and reducing	Sumnusen).	
10	anxiety), Blossom		
11	(women's sexual	Szymanski Dec. (PX-39),	
12	enhancement),	p. 3, ¶ 11 (Run Away's	
13	Comfort-Time	marketing of Prolongz).	
14	(aspirin), Ocean-X,		
15	Sumnusen (for	Yallen Dec. (PX-40), p.	
16	improving sleep),	2, ¶ 8; p. 5, ¶ 16(C) & p.	
17	and Cloverstrips	140-141, Recitals C, D	
18	(CBD).	(Att. 8) (Run Away's	
19		marketing of Prolongz).	
20	275. Run Away Products	Walker Dec. (PX-32), p.	Admit
21	was the contracting	7, ¶ 26.	
22	party with		
23	Inter/Media and		
24	Havas Edge.		
25	276. Redwood was the	Walker Dec. (PX-32), p.	Admit
26	contracting party	7, ¶ 26.	
27	with Cannella and		
28	Mercury Media		

1	277. Jason Cardiff and	Sands 1st Dec. (TRO PX-	Admit
2	Eunjung Cardiff	1), Dkt. 7, p. 60, ¶ 169 &	
3	are the only two	Dkt. 24-4, p. 13 (Att.	
4	settlers and trustees	190).	
5	of Carols Place		
6	Trust.		
7	278. Carols Place Trust	Sands 1st Dec. (TRO PX-	Admit
8	has held title to the	1), Dkt. 7, p. 61, ¶¶ 170-	
9	Cardiffs' home	172 & Dkt. 24-8, p. 3-22	
10	since January 31,	(Att. 192-193).	
11	2017, when it was		
12	transferred from		
13	the Jurikel Family		
14	Trust, of which		
15	Jason Cardiff and		
16	Eunjung Cardiff		
17	are also co-trustees.		
18	279. In this litigation, the	Dkts. 181, 237-238, 315,	Objection as to
19	Court has found	417.	relevance. Whether or
20	Jason Cardiff in		not the Cardiffs have
21	contempt four	Dkts. 206, 144, 200-201,	been held in contempt is
22	times and Eunjung	273, 331, 402.	irrelevant to findings of
23	Cardiff in contempt		liability in the underlying
24	three times, and the		causes of action.
25	Receiver has issued		
26	six affidavits of		
27	noncompliance.		
28	FTC Response to SUF 279: The Cardiffs do not dispute that the Court has		

found Jason Cardiff in contempt four times and Eunjung Cardiff in contempt three times, and the Receiver has issued six affidavits of noncompliance.

SUF 279 is relevant to show the Cardiffs' recalcitrance in the face of court order and the need for strong injunctive relief in light of the Cardiffs' past order violations.

III. TBX-FREE

A. Defendants' Marketing of TBX-FREE

FTC Fact	FTC Citation	Cardiff Admit/Objection
280. The target audience for TBX-FREE were people who wanted to stop smoking.	Adkinson-Connor Dec. (PX-38), p. 12, ¶ 52.	Admit.
281. Jason Cardiff and Eunjung Cardiff admit that Defendants sold TBX-FREE from at least 2015 to 2018.	J. Cardiff 3rd RFA Resp., p. 2, ¶ 112 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 25 (Att. 3)). E. Cardiff 3rd RFA Resp., p. 1-2, ¶ 106 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 76-77 (Att. 7)).	Admit.
282. Jason Cardiff and Eunjung Cardiff	J. Cardiff 3rd RFA Resp., p. 2, ¶ 111 (Sanger Dec.	Object as to lack of timeframe and relevance,

1	admit that	(PX-52), p. 1, ¶ 6 & p. 25	Defendants stopped its
2	Defendants	(Att. 3)).	marketing campaigns in
3	advertised the TBX-		or about February, 2018.
4	FREE dissolvable	E. Cardiff 3rd RFA	Dkt. 429-1 PX 38 at 101-
5	oral film strip.	Resp., p. 1, ¶ 105 (Sanger	102; Ex. A, Jason Cardiff
6		Dec. (PX-52), p. 2, ¶ 10	Declaration ¶¶ 7, 9, and
7		& p. 76 (Att. 7)).	46-53. The last air date
8			and services provided by
9			Mercury Media to
10			Redwood for Eupesia
11			Thin was on December
12			25, 2017. Dkt. 432-1 at
13			25. The last air date for
14			TBX Free was on
15			October 30, 2017. Dkt.
16			432-2 at 3-8. Therefore
17			denied after that date.

FTC Response to SUF 282: Defendants do not dispute their previous admissions that they advertised the TBX-FREE dissolvable oral film strip. They merely deny that the advertising went as long as it did, which is not alleged in the undisputed fact to which they object. In fact, their advertising of TBX-FREE did continue long after February 2018. See Dkt. 491-3, p. 5-6 excerpted at Dkt. 491-3, p. 41-45 (captured by the Internet Archive in April 2018). Also, the tbxfree.com website continued to advertise TBX-FREE as an effective smoking cessation product superior to nicotine patches and gums. See, e.g., Dkt. 491-3 p. 43, Defendants' advertising was still making deceptive claims in April 2018. See also SUF 938.

283. According to the	Sands 1st Dec. (TRO PX-	Admit
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1	TBX-FREE	1), Dkt. 7, p. 14, ¶ 36 &	
2	package, each film	Dkt. 10, p. 168 (Att.	
3	strip contains	072).	
4	Laburnum		
5	anagyroides 1X.		
6	284. In its response to	Sands 1st Dec. (TRO PX-	Admit
7	the Commission's	1), Dkt. 7, p. 2, ¶ 2 &	
8	CID, Redwood	Dkt. 7, p. 96 (Att. 001).	
9	Scientific stated that		
10	gross 2015 sales		
11	revenues for TBX-		
12	FREE were		
13	\$32,125.19.		
14	285. In its response to	Sands 1st Dec. (TRO PX-	Admit
15	the Commission's	1), Dkt. 7, p. 2, ¶ 2 &	
16	CID, Redwood	Dkt. 7), p. 96-97 (Att.	
17	Scientific stated that	001).	
18	gross 2016 sales		
19	revenues for TBX-		
20	FREE were		
21	\$3,469,422.53.		
22	286. In its response to	Sands 1st Dec. (TRO PX-	Admit
23	the Commission's	1), Dkt. 7, p. 2-3, ¶ 3 &	
24	CID, Redwood	Dkt. 7, p. 158 (Att. 003).	
25	Scientific stated that		
26	gross 2017 sales		
27	revenues for TBX-		
28	FREE (not		

1	including third-		
2	party retail sales)		
3	were		
4	\$4,163,823.85.		
5	287. In its response to	Sands 1st Dec. (TRO PX-	Admit
6	the Commission's	1), Dkt. 7, p. 2-3, ¶ 3 &	
7	CID, Redwood	Dkt. 7, p. 158 (Att. 003).	
8	Scientific stated that		
9	gross 2018 sales		
10	revenues for TBX-		
11	FREE (not		
12	including third-		
13	party retail sales)		
14	through April 30,		
15	2018 were		
16	\$365,007.49.		
17	288. In its response to	Sands 1st Dec. (TRO PX-	Admit
18	the Commission's	1), Dkt. 7, p. 2 ¶ 2 & Dkt.	
19	CID, Redwood	7, p. 99 (Att. 001).	
20	Scientific stated that		
21	TBX-FREE refunds		
22	in 2015 were		
23	\$580.10.		
24	289. In its response to	Sands 1st Dec. (TRO PX-	Admit
25	the Commission's	1), Dkt. 7, p. 2, ¶ 2 &	
26	CID, Redwood	Dkt. 7, p. 100 (Att. 001).	
27	Scientific stated that		
28	TBX-FREE refunds		

1	in 2016 were		
2	\$108,831.90.		
3	290. In its response to	Sands 1st Dec. (TRO PX-	Admit
4	the Commission's	1), Dkt. 7, p. 2-3, ¶ 3 &	
5	CID, Redwood	Dkt. 7, p. 162 (Att. 003).	
6	Scientific stated that		
7	TBX-FREE refunds		
8	in 2017 (including		
9	some but not all		
10	chargebacks) were		
11	\$610,807.30.		
12	291. In its response to	Sands 1st Dec. (TRO PX-	Admit
13	the Commission's	1), Dkt. 7, p. 2-3, ¶ 3 &	
14	CID, Redwood	Dkt. 7, p. 163 (Att. 003).	
15	Scientific stated that		
16	TBX-FREE refunds		
17	in 2018 (including		
18	some but not all		
19	chargebacks) were		
20	\$83,150.49 through		
21	April 30, 2018.		
22	292. In response to the	Sands 3rd Dec. (PX-51),	Admit
23	Commission's CID,	p. 18, ¶ 53 & p. 1900	
24	Redwood Scientific	(Att. 128).	
25	reported net TBX-		
26	FREE sales of	See also SUF 284-291.	
27	\$7,227,009.27 for		
28	2015 through April		

1	2018.		
2	293. Defendants	Walker Dec. (PX-32), p.	Object as to lack of
3	advertised TBX-	5, ¶¶ 20-21.	timeframe and relevance,
4	FREE using long-		Defendants stopped its
5	form and short-form	Adkinson-Connor Dec.	marketing campaigns in
6	national television	(PX-38), p. 1, ¶ 5; p. 2-3,	or about February, 2018.
7	commercials,	¶ 10 & p. 57-515 (Att. 9);	Dkt. 429-1 PX 38 at 101-
8	websites, social	p. 4-5, ¶¶ 14-21.	102; Ex. A, Jason Cardiff
9	media (including		Declaration ¶¶ 7, 9, and
10	Facebook,		46-53. The last air date
11	Instagram, and		and services provided by
12	YouTube), print,		Mercury Media to
13	and robocalls.		Redwood for Eupepsia
14			Thin was on December
15			25, 2017. Dkt. 432-1 at
16			25. The last air date for
17			TBX Free was on
18			October 30, 2017. Dkt.
19			432-2 at 3-8. Therefore
20			denied after that date.
21	FTC Response to SUF 293: Defendants admit they advertised TBX-FREE		
22	using long-form and short-form national television commercials, websites, social		
23	media (including Facebook, Instagram, and YouTube), print, and robocalls. They		
24	only object that television advertising through Mercury Media was discontinued		
25	after October 30, 2017. See also p. 2 <i>supra</i> (Mercury Media's last airing of		
26	TBX-FREE long form advertising was February 12, 2018). While this is not		
27	relevant to liability, defendants continued advertising TBX-FREE with a		
28	different media company, Cannella, through 2018. See SUF 132, 135, and 297.		

See also SUF 938 for online advertising through August 2018.

294. Jason Cardiff and Eunjung Cardiff admit that Defendants purchased media time for TBX-FREE television advertisements from Cannella Response Television, LLC.	J. Cardiff 3rd RFA Resp., p. 2, ¶ 116 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 25 (Att. 3)). E. Cardiff 4th RFA Resp., p. 2, ¶ 274 (Sanger Dec. (PX-52), p. 2, ¶ 11 & p. 106 (Att. 8)).	Object as to lack of timeframe and relevance, Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶7, 9, and 46-53. Therefore denied after that date.
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FTC Response to SUF 294: Defendants do not dispute their prior admissions to placing media time with Cannella Response for TBX-FREE. The timeframe is not relevant to individual liability even if this particular advertising ceased in February 2018. The Cannella advertising before February 2018 is relevant to the Cardiff's individual liability for injunctive and monetary relief.

295. Jason Cardiff and Eunjung Cardiff admit that Cannella arranged for TBX-FREE television advertisements to be broadcast on national cable television.	J. Cardiff 3rd RFA Resp., p. 3, ¶ 119 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 26 (Att. 3)). E. Cardiff 3rd RFA Resp., p. 2-3, ¶ 113 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 77-78 (Att. 7)).	Object as to lack of timeframe and relevance, Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶7, 9, and 46-53. The last air date and services provided by Mercury Media to
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		Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8. Therefore denied after that date.
<p>FTC Response to SUF 295: Defendants do not dispute that they placed television advertising with Cannella on nationwide cable through February 2018. They only dispute what has not been asserted in the undisputed fact: that Mercury Media placed this advertising. These irrelevant arguments should be disregarded.</p>		
296. Cannella purchased media time for TBX-FREE television advertising at the end of 2015, and in 2016, 2017, and 2018. ⁵	Adkinson-Connor Dec. (PX-38), p. 5, ¶¶ 18-21; p. 2-3, ¶ 10 & p. 171-222, 225-319 (Att. 9). Walker Dec. (PX-32), p. 8 ¶ 34.	Object as to lack of timeframe and relevance, Defendants stopped its marketing campaigns in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and 46-53. Therefore denied after that date.
297. During 2015, Cannella purchased media time for	Adkinson-Connor Dec. (PX-38), p. 5, ¶¶ 18-21; p. 2-3, ¶ 10 & p. 171-222	

⁵ The Cardiffs submitted a single objection to SUF 296-310; the FTC's response begins on p. 165.

1	TBX-FREE long-	(Att. 9).	
2	form ads entitled		
3	TBX FREE, TBX	See also J. Cardiff 3rd	
4	FREE NOW, TBX	RFA Resp., p. 3-4, ¶ 120	
5	FREE PI, TBX	(TBX-FREE); ¶ 121	
6	FREE SYN, TBX	(TBX FREE SYN); ¶ 122	
7	FREE TBX01,	(TBX FREE NOW); ¶	
8	TBX FREE V2,	123 (TBX FREE V2); ¶	
9	TBX FREE V3,	124 (TBX FREE V3); ¶	
10	TBX FREE V3 PI,	126 (TBX FREE V3	
11	and TBX FREE V3	W/HE30);	
12	W/HE30 from	¶ 127 (TBX FREE PI)	
13	television stations	(Sanger Dec. (PX-52), p.	
14	that aired them	1, ¶ 6 & p. 26-27 (Att.	
15	across the United	3)).	
16	States.		
17		See also E. Cardiff 3rd	
18		RFA Resp., p. 3-4, ¶ 114	
19		(TBX-FREE); ¶ 115	
20		(TBX FREE SYN); ¶ 116	
21		(TBX FREE NOW); ¶	
22		117 TBX FREE V2); ¶	
23		118 (TBX FREE V3); ¶	
24		120 (TBX FREE V3	
25		W/HE30); ¶ 121 (TBX	
26		FREE PI) (Sanger Dec.	
27		(PX-52), p. 2, ¶ 10 & p.	
28		78-79 (Att. 7)).	

1	298. In 2016, Cannella	Adkinson-Connor Dec.
2	purchased media	(PX-38), p. 5, ¶ 19; p. 2-
3	time for the TBX-	3, ¶ 10 & p. 225-319
4	FREE short-form ad	(Att. 9).
5	entitled U2GL	
6	(TBX FREE :60).	
7	299. Cannella produced	Adkinson-Connor Dec.
8	to the FTC the long-	(PX-38), p. 4, ¶ 14.
9	form ad entitled	
10	TBX-FREE with	
11	master number	
12	454250 as a file	
13	bates-stamped	
14	CAN-	
15	CARDIFF0000042.	
16	300. The long-form ads	Adkinson-Connor Dec.
17	entitled TBX	(PX-38), p. 3, ¶ 11; p. 4,
18	FREE, TBX FREE	¶ 15.
19	PI, and TBX FREE	
20	SYN share the same	
21	master number	
22	(454250).	
23	301. Cannella purchased	Sands 3rd Dec. (PX-51),
24	media time for 242	p. 12, ¶ 41 & p. 1684
25	airings of TBX	(Att. 125).
26	FREE, 1,054 airings	
27	of TBX FREE PI,	Adkinson-Connor Dec.
28	and 25 airings of	(PX-38), p. 4, ¶ 14; p. 2-

1	TBX FREE SYN,	3, ¶ 10 & p. 171-175	
2	for a total of 1,321	(Att. 9) for TBX FREE,	
3	airings of the three	p. 181-196 (Att. 9) for	
4	ads that share the	TBX FREE PI, p. 196	
5	454250 master	(Att. 9) for TBX FREE	
6	number.	SYN.	
7	302. Cannella purchased	Sands 3rd Dec. (PX-51),	
8	media time for 427	p. 12, ¶ 41 & p. 1684	
9	airings of the long-	(Att. 125).	
10	form ad entitled		
11	TBX FREE NOW	Adkinson-Connor Dec.	
12	with master number	(PX-38), p. 4, ¶ 14; p. 2-	
13	471025 that it	3, ¶ 10 & p. 175-181	
14	produced to the	(Att. 9).	
15	FTC as a file bates-		
16	stamped CAN-		
17	CARDIFF0000034.		
18	303. Cannella purchased	Sands 3rd Dec. (PX-51),	
19	media time for one	p. 12, ¶¶ 38, 39, 41 & p.	
20	airing of an ad	1685 (Att. 125).	
21	entitled TBX FREE		
22	TBX01, which	Adkinson-Connor Dec.	
23	Extreme Reach,	(PX-38), p. 4, ¶ 17; p. 2-	
24	Cannella's dub	3, ¶ 10 & p. 196 (Att. 9);	
25	house, produced to	p. 3-4, ¶ 11-13.	
26	the FTC and		
27	identified as having	Donato Dec. (PX-44), p.	
28	master number	2, ¶ 7.	

1	471025.	
2	304. Cannella purchased	Sands 3rd Dec. (PX-51),
3	media time for 81	p. 12, ¶ 41 & p. 1684
4	airings of the long-	(Att. 125).
5	form ad entitled	
6	TBX FREE V2	Adkinson-Connor Dec.
7	with master number	(PX-38), p. 4, ¶ 14; p. 2-
8	476090 that it	3, ¶ 10 & p. 196-197
9	produced to the	(Att. 9).
10	FTC as a file bates-	
11	stamped CAN-	
12	CARDIFF0000032.	
13	305. Cannella produced	Adkinson-Connor Dec.
14	to the FTC the long-	(PX-38), p. 4, ¶ 14.
15	form ad entitled	
16	TBX-FREE V3	
17	with master number	
18	477850 as a file	
19	bates-stamped	
20	CAN-	
21	CARDIFF0000041.	
22	306. The long-form ads	Adkinson-Connor Dec.
23	entitled TBX FREE	(PX-38), p. 3, ¶ 11; p. 4,
24	V3 and TBX FREE	¶ 16.
25	V3 PI share the	
26	same master	
27	number (477850).	
28	307. Cannella purchased	Sands 3rd Dec. (PX-51),

1	media time for 430	p. 12, ¶ 41 & p. 1684	
2	airings of TBX	(Att. 125).	
3	FREE V3 and 32		
4	airings of TBX	Adkinson-Connor Dec.	
5	FREE V3 PI, for a	(PX-38), p. 4, ¶ 14; p. 2-	
6	total of 462 airings	3, ¶ 10 & p. 197-204	
7	of the two ads that	(Att. 9).	
8	share the 477850		
9	master number.		
10	308. Cannella purchased	Sands 3rd Dec. (PX-51),	
11	media time for	p. 12, ¶ 41 & p. 1685	
12	1,280 airings of the	(Att. 125).	
13	long-form ad		
14	entitled TBX FREE	Adkinson-Connor Dec.	
15	V3 W/HE30 with	(PX-38), p. 4, ¶ 14; p. 2-	
16	master number	3, ¶ 10 & p. 204-222	
17	483026 that it	(Att. 9).	
18	produced to the		
19	FTC as a file bates-		
20	stamped CAN-		
21	CARDIFF0000038.		
22	309. Cannella purchased	Sands 3rd Dec. (PX-51),	
23	media time for	p. 12, ¶ 41 & p. 1685	
24	2,844 airings of the	(Att. 125).	
25	short-form TBX-		
26	FREE ad entitled	Adkinson-Connor Dec.	
27	U2GL that it	(PX-38), p. 4, ¶ 14; p. 2-	
28	produced to the	3, ¶ 10 & p. 225-319	

1	FTC as a file bates-	(Att. 9).	
2	stamped CAN-		
3	CARDIFF0000045.		
4	310. Cannella purchased	Sands 3rd Dec. (PX-51),	
5	media time for a	p. 12, ¶ 41 & p. 1684-	
6	total of 6,416	1685 (Att. 125).	
7	airings of TBX-		
8	FREE advertising.	See SUF 301-304, 307-	
9		309.	
10			
11		Adkinson-Connor Dec.	
12		(PX-38), p. 4, ¶ 14; p. 2-	
13		3, ¶ 10 & p. 171-222,	
14		225-319 (Att. 9).	
15	FTC Response to SUF 296-310: The Defendants do not dispute that they		
16	placed long form and short-form TBX-FREE television advertising through		
17	Cannella in 2015, 2016, 2017, and 2018. Their objection that they did not do so		
18	after February 2018 is not relevant to liability. The Defendants purchase of		
19	thousands of placements of these widely-disseminated nationwide deceptive		
20	advertisements during the times alleged is relevant to Defendants' individual		
21	liability for injunctive and monetary relief.		
22	311. Corporate	Cabrinha Dec. (PX-41),	Object as to irrelevant.
23	Defendants signed a	p. 1, ¶ 3 & p. 4-13 (Att.	The last air date and
24	Client Services	1).	services provided by
25	Agreement with		Mercury Media to
26	Mercury Media in		Redwood for Eupepsia
27	June 2017.		Thin was on December
28	312. That Client Services	Cabrinha Dec. (PX-41),	25, 2017. Dkt. 432-1 at

1	Agreement	p. 1, ¶ 3.	25. The last air date for
2	provided for		TBX Free was on
3	Mercury Media to		October 30, 2017. Dkt.
4	purchase television		432-2 at 3-8.
5	time in which		
6	Redwood's		
7	advertising would		
8	run.		
9	313. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
10	Eunjung Cardiff	p. 4-5, ¶¶ 129-130	
11	admit that Mercury	(Sanger Dec. (PX-52), p.	
12	Media purchased	1, ¶ 6 & p. 27-28 (Att.	
13	media time for	3)).	
14	TBX-FREE		
15	television	E. Cardiff 3rd RFA	
16	advertising, and that	Resp., p. 4, ¶¶ 123-124	
17	Mercury Media	(Sanger Dec. (PX-52), p.	
18	placed television	2, ¶ 10 & p. 79 (Att. 7)).	
19	advertising for		
20	TBX-FREE on	See also Cabrinha Dec.	
21	national media.	(PX-41), p. 1-2, ¶¶ 3, 5 &	
22		p. 14-24 (Att. 2).	
23			
24		See also Young Dec.	
25		(PX-42), p. 1, ¶ 7.	
26	314. Mercury Media	Cabrinha Dec. (PX-41),	
27	placed television	p. 1-2, ¶¶ 3, 5 & p. 14-24	
28	advertising for	(Att. 2).	

1	TBX-FREE on		
2	national media		
3	between August		
4	and December		
5	2017, and once in		
6	February 2018.		
7	315. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
8	Eunjung Cardiff	p. 5, ¶ 131 (Sanger Dec.	
9	admit that Mercury	(PX-52), p. 1, ¶ 6 & p. 28	
10	Media arranged for	(Att. 3)).	
11	a 5-minute TBX-		
12	FREE television	E. Cardiff 3rd RFA	
13	advertisement	Resp., p. 4, ¶ 125 (Sanger	
14	identified as “TBX	Dec. (PX-52), p. 2, ¶ 10	
15	2017 SF1” to be	& p. 79 (Att. 7)).	
16	broadcast on		
17	national cable		
18	television.		
19	316. Mercury Media	Young Dec. (PX-42) p. 1,	
20	arranged for the 5-	¶ 7 & p. 2, 4-7 (Att. 1).	
21	minute TBX-FREE		
22	television		
23	advertisement with		
24	the master number		
25	#482725/H (NE), to		
26	be broadcast on		
27	national cable		
28	television in		

1	October 2017.		
2	FTC Response to SUF 311-316: Defendants do not dispute that they entered		
3	into contractual arrangements with Mercury Media, that Mercury purchased		
4	advertising time for TBX-FREE television advertising, or that the ads were		
5	broadcast on nationwide television. They deny that any advertising was placed		
6	with Mercury after October 30, 2017. See also p. 2 <i>supra</i> (explanation re		
7	Boilerplate Objection 1 that Mercury Media's last airing of TBX-FREE long		
8	form advertising was February 12, 2018). In any case, the timeframe is not		
9	relevant to the Cardiffs' liability for widely disseminating deceptive advertising		
10	claims and is relevant to their individual liability for injunctive and monetary		
11	relief.		
12	317. Defendants	Walker Dec. (PX-32), p.	Admit. As a result of the
13	advised TBX-	9, ¶ 37 & p. 536-546	CID, and long before the
14	FREE on the	(Att. 48).	FTC filed suit, Redwood
15	websites		stopped all advertising of
16	www.tbxfree.com,	Adkinson-Connor Dec.	products through any
17	trytbxfree.com,	(PX-38), p. 13, ¶ 60.	outside paid marketing
18	www.trytbxfreenow		and promotions after
19	.com, and	See also Sands 1st Dec.	February 2018. Dkt. 253-
20	www.stopsmoking	(TRO PX-1), Dkt. 7, p. 3-	1 Declaration of Jason
21	now.com.	4, ¶ 6 & Dkt. 7, p. 229-	Cardiff ¶10; Dkt. 253-2
22		239 (Att. 008).	Declaration of Eunjung
23	318. Defendants	Walker Dec. (PX-32), p.	Cardiff ¶10; Ex. A,
24	advised TBX-	9-10, ¶¶ 38-39 (Facebook	Declaration of Jason
25	FREE on social	and Instagram) & p. 599	Cardiff ¶¶7, 9, and 46-53.
26	media.	(Att. 60).	
27			
28		Sands 1st Dec. (TRO PX-	

	<p>1), Dkt. 7, p. 4, ¶¶ 7-9 & Dkt. 7, p. 240-282 (Atts. 009-017) (Facebook videos).</p> <p>See also Wu Dec. (PX-37), p. 2, 9 (helped with design and placement of TBX-FREE ads on Facebook).</p> <p>Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 78, 107139 (Atts. 24, 33-35).</p>	
<p>319. Defendants advertised TBX-FREE in print.</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 4-5, ¶¶ 10-12 & Dkt. 7, p. 283-289 (Atts. 018-022).</p> <p>Walker Dec. (PX-32), p. 10, ¶ 42 & p. 600-619 (Atts. 61-66).</p>	
<p>FTC Response to SUF 317-319: The Cardiffs admit that they advertised TBX-FREE on the listed website, on social media, and in print prior to February 2018. The remaining narrative is argument and should be disregarded. Moreover, The Cardiffs did not cease promoting TBX-FREE in February 2018. SUF 938.</p>		
<p>320. Defendants advertised TBX-</p>	<p>Walker Dec. (PX-32), p. 6, ¶ 21.</p>	<p>Admit, through July, 2018. Ex. A, Declaration</p>

1 2 3 4 5	FREE through prerecorded robocalls.	Sands 1st Dec. (TRO PX- 1), Dkt. 7, p. 38, ¶ 111 & Dkt. 13, p. 66-71 (Atts. 125-126).	of Jason Cardiff ¶37.
6 7 8 9 10	321. Defendants advertised TBX- FREE on product packaging.	Sands 1st Dec. (TRO PX- 1), Dkt. 7, p. 16, ¶ 45 & Dkt. 10, p. 235-236 (Att. 081).	Object as irrelevant because packaging cannot create a net impression and induce a sale.

FTC Response to SUF 321: Defendants do not dispute that they advertised TBX-FREE on product packaging. The objection is argument, however, even if consumers have already purchased the product, packaging statements can influence their decisions regarding using the product and purchasing additional product. In addition, because Defendants put images of the TBX-FREE package on their www.tbxfree.com/2 website, Dkt. 7, p. 229, 235 (Att. 008), potential customers would see label statements prior to purchase. Consequently, advertising on the package is relevant to the Cardiffs' individual liability for injunctive and monetary relief.

B. Defendants' Smoking Cessation Claims for TBX-FREE

22 23	FTC Fact	FTC Citation	Cardiff Admit/Objection
24 25 26 27 28	322. At least five of Defendants' TBX-FREE television ads said that "TBX-FREE MAKES IT EASY TO QUIT SMOKING!"	Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 276, 301, ln. 6 (Att. 86).	Object as to lack of timeframe and relevance, Defendants stopped its marketing campaigns in or about

1		Sands 3rd Dec.	February, 2018. Dkt.
2		(PX-51), p. 9-11, ¶	429-1 PX 38 at 101-
3		37 & p. 393, 417,	102; Ex. A, Jason
4		ln. 10 (Att. 88).	Cardiff Declaration
5			¶¶7, 9, and 46-53.
6		Sands 3rd Dec.	The last air date and
7		(PX-51), p. 9-11, ¶	services provided by
8		37 & p. 330, 359,	Mercury Media to
9		ln. 12 (Att. 87).	Redwood for
10			Eupepsia Thin was on
11		Sands 3rd Dec.	December 25, 2017.
12		(PX-51), p. 9-11, ¶	Dkt. 432-1 at 25. The
13		37 & p. 448, 473,	last air date for TBX
14		ln. 6 (Att. 89).	Free was on October
15			30, 2017. Dkt. 432-2
16		Sands 3rd Dec.	at 3-8. Therefore
17		(PX-51), p. 9-11, ¶	denied after that date.
18		37 & p. 502, 527,	
19		ln. 8 (Att. 90).	
20	323. At least four of Defendants'	Sands 3rd Dec.	
21	TBX-FREE television ads	(PX-51), p. 9-11, ¶	
22	said that "TBX-FREE is	37 & p. 393, 407	
23	ready to set you free from	ln. 13-16 (Att. 88).	
24	nicotine addiction forever		
25	and the addiction to tobacco	Sands 3rd Dec.	
26	and cigarettes."	(PX-51), p. 9-11, ¶	
27		37 & p. 276, 290,	
28		ln. 15-17 (Att. 86).	

	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 448, 462, ln. 15-17 (Att. 89).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 502, 516, ln. 17-19 (Att. 90).</p>	
<p>324. At least five of Defendants’ TBX-FREE television ads asked viewers “Did you know the cure rate for the FDA approved patch and gum is a whopping 2 percent? That’s right. A 2 percent success rate at best. . . . And what about the other 98 percent? . . . Well, we have you 100 percent covered.”</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 276, 289, ln. 20 – p. 290, ln. 15 (Att. 86).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 330, 345, ln. 22 – p. 346, ln. 23 (Att. 87).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 393, 406, ln. 19 – p. 407, ln. 14 (Att. 88).</p>	

1		Sands 3rd Dec.	
2		(PX-51), p. 9-11, ¶	
3		37 & p. 448, 461,	
4		ln. 20 – p. 462, ln.	
5		15 (Att. 89).	
6			
7		Sands 3rd Dec.	
8		(PX-51), p. 9-11, ¶	
9		37 & p. 502, 515,	
10		ln. 22 – p. 516, ln.	
11		17 (Att. 90).	
12	325. At least one of Defendants’	Sands 3rd Dec.	
13	TBX-FREE television ads	(PX-51), p. 9-11, ¶	
14	said “With an 88 percent	37 & p. 556, 560,	
15	success rate...TBX-FREE is	ln. 9-15 (Att. 91).	
16	the number one choice by		
17	smokers.”		
18	326. At least four of Defendants’	Sands 3rd Dec.	
19	TBX-FREE television ads	(PX-51), p. 9-11, ¶	
20	said HUNDREDS &	37 & p. 276, 289,	
21	HUNDREDS OF	ln. 4-11 (Att. 86).	
22	CLINICAL STUDIES		
23	PERFORMED ON OVER	Sands 3rd Dec.	
24	10,600 SMOKERS!”	(PX-51), p. 9-11, ¶	
25		37 & p. 393, 406,	
26		ln. 3-10 (Att. 88).	
27			
28		Sands 3rd Dec.	

1		(PX-51), p. 9-11, ¶	
2		37 & p. 448, 461,	
3		ln. 4-11 (Att. 89).	
4			
5		Sands 3rd Dec.	
6		(PX-51), p. 9-11, ¶	
7		37 & p. 502, 515,	
8		ln. 6-13 (Att. 90).	
9	327. At least four of Defendants’	Sands 3rd Dec.	
10	TBX-FREE television ads	(PX-51), p. 9-11, ¶	
11	said “If you’ll get your	37 & p. 276, 322,	
12	treatment started today, in as	ln. 17-20 (Att. 86).	
13	little as 30 days, you should		
14	never want to smoke another	Sands 3rd Dec.	
15	cigarette again.”	(PX-51), p. 9-11, ¶	
16		37 & p. 393, 438,	
17		ln. 21-24 (Att. 88).	
18			
19		Sands 3rd Dec.	
20		(PX-51), p. 9-11, ¶	
21		37 & p. 448, 494,	
22		ln. 17-20 (Att. 89).	
23			
24		Sands 3rd Dec.	
25		(PX-51), p. 9-11, ¶	
26		37 & p. 502, 548,	
27		ln. 19-22 (Att. 90).	
28	FTC Response to SUF 322 – 327: The Cardiffs do not dispute that their TBX-		

FREE television ads prior to October 30, 2017 claimed that TBX-FREE was an effective smoking cessation aid, that it was more effective than nicotine patches and gum, that it had an 88 percent success rate, and that its efficacy had been shown in hundreds of clinical studies conducted on more than 10,600 smokers. Whether or defendants' ads ceased prior to October 30, 2017 is not relevant to the defendants' liability. The timeframe is the period when Defendants marketed and sold TBX-FREE (2015-2018, see Dkt. 1), and these facts are relevant to the Cardiffs' individual liability for injunctive and monetary relief. However, the Cardiffs did not cease advertising on October 30, 2017. See p. 2 *supra* (explanation re Boilerplate Objection 1 that Mercury Media's last airing of TBX-FREE long form advertising was February 12, 2018). Defendants also continued to market TBX-FREE after February 12, 2018. See SUF 938.

The objection regarding air dates for Eupepsia Thin do not bear on SUF 322-327 and should be disregarded.

328. Defendants' TBXFREE.com/2 website stated "Revolutionary New Stop Smoking Product More effective than the Patch and GUM."	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 3-4, ¶ 6 & Dkt. 7, p. 229 (Att. 008).	Admit
329. Defendants' TBXFREE.com/2 website stated "The #1 Choice to QUIT SMOKING!"	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 3-4, ¶ 7 & Dkt. 7, p. 229 (Att. 008).	Admit
330. Defendants' TBXFREE.com/2 website stated "88% Success	Sands 1st Dec. (TRO PX-1), Dkt.	Objection as to lack of timeframe.

1 2 3 4 5 6 7 8 9 10 11 12 13 14	Rate.”	7, p. 3-4, ¶ 6 & Dkt. 7, p. 230, 237 (Att. 008).	Defendants took down this claim in or about February, 2018 and corrected the advertising issues brought forth in the CID. Dkt. 253-1 Declaration of Jason Cardiff ¶10; Dkt. 253-2 Declaration of Eunjung Cardiff ¶10; Ex. A, Declaration of Jason Cardiff ¶¶7, 9, and 46-53_.
15 16 17 18 19	FTC Response to SUF 330: Defendants do not dispute that their TBXFREE.com/2 website claimed an “88% Success Rate” prior to February 2018. Whether or not othe website was changed in Feburary 2018 is not relevant to defendants’ liability for making the claim. Further, at least one TBX website making the 88% claim was still active in August 2018. SUF 938 & 939.		
20 21 22 23 24 25 26 27 28	331. Defendants’ TBXFREE.com/2 website displayed the statement “TBX-FREE VS. The Patch & Nicotine Gum” above an image of nicotine gum and the statement “LESS THAN 5% Success Rate to Quit Smoking.”	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 3-4, ¶ 6 & Dkt. 7, p. 230 (Att. 008).	Admit. The relative difference in smoking cessation between cytisine and placebo (relative rate, 3.4) was higher than previous studies have shown for varenicline (2.3) and nicotine-

<p>332. Defendants’ TBXFREE.com/2 website displayed an image of an arm with an attached patch and the statement “LESS THAN 10% Success Rate to Quit Smoking.”</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 3-4, ¶ 6 & Dkt. 7, p. 231 (Att. 008).</p>	<p>replacement therapy (1.6) over a 4 week period. Ex. A, Declaration of Jason Cardiff ¶13. In a study that used the same dosage and active amount of cytisine, cytisine was 9% more effective that nicotine replacement therapy over a month period. Ex. A, Declaration of Jason Cardiff ¶16</p>
<p>FTC Response to SUF 331-332: The Cardiffs do not dispute that their TBX-FREE website claimed “TBX-FREE VS. The Patch & Nicotine Gum” above an image of nicotine gum and the statement “LESS THAN 5% Success Rate to Quit Smoking,” and displayed an image of an arm with an attached patch and the statement “LESS THAN 10% Success Rate to Quit Smoking.” The remaining narrative should be disregarded as argument. Furthermore, Jason Cardiff’s gratuitous characterization of the findings of any scientific study is inadmissible under FRE 701. See SUF 392 (citing Prochaska Expert Report (TRO PX- 7), Dkt. 207, p. 6-7).</p>		
<p>333. Below the image of the arm with an attached patch, Defendants’ TBXFREE.com/2 website</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 3-4, ¶ 6 & Dkt. 7, p. 231 (Att.</p>	<p>Objection as to lack of timeframe. Defendants took down the false</p>

1	displayed an image of TBX-	008).	advertising in or
2	FREE strip being placed on		about February, 2018
3	a person's tongue and the		and corrected the
4	statement "OVER 70%+		advertising issues
5	Success Rate to Quit		brought forth in the
6	Smoking."		CID. Dkt. 253-1
7	334. Defendants'	Sands 1 st Dec.	Declaration of Jason
8	TBXFREE.com/2 website	(TRO PX-1), Dkt.	Cardiff ¶10; Dkt. 253-
9	stated that TBX-FREE	7, p. 3-4, ¶ 6 &	2 Declaration of
10	"allows smokers to stop	Dkt. 7, p. 232 (Att.	Eunjung Cardiff ¶10;
11	smoking once and for all	008).	Ex. A, Declaration of
12	without the use of nicotine.		Jason Cardiff ¶¶7, 9,
13	In clinical studies cited in		and 46-53.
14	The New England Journal of		
15	Medicine, the active		
16	ingredient in TBX-FREE has		
17	an 88% cure care [sic]		
18	compared to the patch and		
19	gum combined."		
20	335. Defendants'	Sands 1 st Dec.	
21	TBXFREE.com/2 website	(TRO PX-1), Dkt.	
22	displayed a graph entitled	7, p. 3-4, ¶ 6 &	
23	"Cure Rate Over Time in	Dkt. 7, p. 232 (Att.	
24	Months" that showed TBX-	008).	
25	FREE with a higher rate at		
26	the 12 month point than		
27	nicotine patches and gums.		
28	FTC Response to SUF 333-335: The Cardiffs do not dispute that their		

TBXfree.com/2 website stated that TBX-FREE had a success rate exceeding 70%, that clinical studies cited in The New England Journal of Medicine reported an 88% cure rate for the active ingredient in TBX-FREE, or that TBX-FREE had a higher cure at the 12 month point than nicotine patches and gums. Whether or not this advertising ceased in February 2018 is not relevant to Defendants' liability.

However, Jason Cardiff's own evidence shows that through April 2018, the tbxfree.com website continued to tout TBX-FREE as an effective smoking cessation aid and superior to nicotine patches and gums (see Dkt. 491-3 p. 43).

336. The name and logo of "The New England Journal of Medicine" appeared below the "Cure Rate Over Time in Months" graph.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 3-4, ¶ 6 & Dkt. 7, p. 232 (Att. 008).	Deny as it pertains to any wrongdoing of Defendants. Defendants used New England Journal of
337. Defendants' TBXFREE.com/2 website stated: "Clinically Proven: New England Journal of Medicine STOP SMOKING NOW."	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 3-4, ¶ 6 & Dkt. 7, p. 232, 235 (Att. 008).	Medicine to show that cytisine, the active ingrednient in TBX-FREE, is an effective smoking cessation. Ex. A, Declaration of
338. Defendants' TBXFREE.com/2 website stated: "Clinically Proven [in] Johns Hopkins University The New England Journal of Medicine	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 3-4, ¶ 6 & Dkt. 7, p. 233, 236 (Att. 008).	Jason Cardiff ¶12-16.

1	Harvard Health Publications		
2	Harvard Medical School.”		
3	339. Defendants’	Sands 1st Dec.	
4	TBXFREE.com/2 website	(TRO PX-1), Dkt.	
5	stated:	7, p. 3-4, ¶ 6 &	
6	“TBX-FREE Helps you Quit	Dkt. 7, p. 237 (Att.	
7	smoking . . The cytisine	008).	
8	inside TBX-FREE absorbs		
9	quickly into the body to give		
10	the overwhelming sensation		
11	that you have just smoked a		
12	real cigarette!		
13	• PROVEN IN		
14	RESEARCH STUDIES		
15	TO HELP SMOKERS		
16	QUIT THEIR		
17	ADDICTION!”		
18	340. Defendants’	Sands 1st Dec.	
19	TBXFREE.com/2 website	(TRO PX-1), Dkt.	
20	stated:	7, p. 3-4, ¶ 6 &	
21	“Cytisine in TBX-FREE	Dkt. 7, p. 238 (Att.	
22	absorbs into the body and	008).	
23	helps smokers calm their		
24	cigarette cravings. TBX-		
25	FREE also gives the		
26	sensation of smoking a real		
27	cigarette when used as		
28	recommended with no		

1	withdrawal normally felt		
2	when trying to quit cold		
3	turkey. TBX-FREE makes		
4	smoking feel unpleasant so		
5	that quitting becomes even		
6	easier. TBX-FREE is the		
7	most advanced and most		
8	effective method of quitting		
9	smoking once and for all.”		
10	FTC Response to SUF 336 – 340: The Cardiffs do not dispute that the		
11	TBXFREE.com/2 website featured, among other statements and images, the		
12	name and logo of The New England Journal of Medicine, the statement		
13	“Clinically proven: New England Journal of Medicine,” and the statement that		
14	TBX-FREE had been clinically proven [in] Johns Hopkins University, the New		
15	England Journal of Medicine, and Harvard Medical School. Defendants,		
16	however, argue that this is not evidence of wrongdoing and again argue that		
17	TBX-FREE was effective by offering Jason Cardiff’s characterization of a		
18	scientific study. This is both irrelevant and inadmissible under FRE 701.		
19	341. Jason Cardiff appeared in	Sands 1st Dec.	Objection as to lack
20	Facebook Live advertising	(TRO PX-1), Dkt.	of timeframe and
21	for TBX-FREE posted	7, p. 4, ¶ 7 & Dkt.	relevance. Defendants
22	January 8, 2017. ⁶	7, p. 240, 241, 254	modified its
23		(Atts. 009, 010,	advertising in or
24		011).	about February, 2018.

⁶ The Cardiffs submitted a single objection to SUF 341-374; the FTC’s response begins on p. 192.

1	342. Jason Cardiff stated in	Sands 1st Dec.	Dkt. 253-1
2	Facebook Live advertising	(TRO PX-1), Dkt.	Declaration of Jason
3	for TBX-FREE that it was a	7, p. 4, ¶ 7 & Dkt.	Cardiff ¶10; Dkt. 253-
4	“life-saving and changing	7, p. 244, ln. 12-13	2 Declaration of
5	product that will stop you	(Att. 010).	Eunjung Cardiff ¶1;
6	from smoking cigarettes.”		Ex. A, Declaration of
7	343. Jason Cardiff stated in	Sands 1st Dec.	Jason Cardiff ¶¶7, 9,
8	Facebook Live advertising	(TRO PX-1), Dkt.	and 46-53.
9	for TBX-FREE that the	7, p. 4, ¶ 7 & Dkt.	Defendants used
10	product would stop smokers	7, p. 245, ln. 25 –	numerous journals
11	“from smoking cigarettes	p. 246, ln. 6 (Att.	and clinical studies to
12	absolutely with a greater	010).	show that cytisine, the
13	effective rate than anything		active ingrednient in
14	on the market. We have an		TBX-FREE, is an
15	88 percent effective rate in		effective smoking
16	long-term cure, in long-term		cessation. Ex. A,
17	smokers. A long-term		Declaration of Jason
18	smoker is someone who’s		Cardiff ¶12-16.
19	been smoking more than five		Clinical studies did
20	years, more than a pack or		show that the active
21	around a pack a day on		ingredient in TBX-
22	average.”		FREE were effective
23	344. Jason Cardiff stated in	Sands 1st Dec.	smoking cessation
24	Facebook Live advertising	(TRO PX-1), Dkt.	agents. Out of a 60
25	for TBX-FREE that “Our	7, p. 4, ¶ 7 & Dkt.	person study, 13.8%
26	clinical data on TBX-Free	7, p. 246, ln. 7–13	quit smoking during a
27	has been done by some of	(Atts. 010).	12 month period with
28	the greatest medical and		the aid of cytisine

1	scientific institutions		(Tabex) and the
2	anywhere that we know of,		results were on par
3	including, not limited to the		with “smokers
4	New England Journal of		receiving nicotine
5	Medicine, which ranks our		replacement therapy.”
6	product ten times more		Ex. A, Jason Cadiff
7	effective than nicotine-		Declaration ¶13.
8	replacement therapy to stop		The relative
9	smoking. That’s who’s		difference in smoking
10	giving us this data.”		cessation between
11	345. Jason Cardiff stated in	Sands 1st Dec.	cytisine and placebo
12	Facebook Live advertising	(TRO PX-1), Dkt.	(relative rate, 3.4) was
13	for TBX-FREE that “Our	7, p. 4, ¶ 7 & Dkt.	higher than previous
14	product has an 88 percent	7, p. 249, ln. 20-21	studies have shown
15	chan[c]e of you never	(Atts. 010).	for varenicline (2.3)
16	smoking again.”		and nicotine-
17			replacement therapy
18	346. Jason Cardiff stated in	Sands 1st Dec.	(1.6) over a 4 week
19	Facebook Live advertising	(TRO PX-1), Dkt.	period. Ex. A,
20	for TBX-FREE that “all	7, p. 4, ¶ 7 & Dkt.	Declaration of Jason
21	these scientists and doctors	7, p. 250, ln. 19-22	Cardiff ¶14.
22	and studies and 10,600	(Atts. 010).	In a 12-month
23	smokers that went through		abstinence study of 40
24	the test to get these results,		participants, 8.4% of
25	they’re not wrong. The		subjects quit smoking
26	product works.”		with help of cytisine
27	347. Jason Cardiff appeared in	Sands 1st Dec.	as opposed to 2.4% of
28	Facebook Live advertising	(TRO PX-1), Dkt.	the placebo group.

1	for TBX-FREE posted	7, p. 4, ¶ 8 & Dkt.	The 6% difference was deemed a 95% confidence level of effectiveness of cytisine. Ex. A, Declaration of Jason Cardiff ¶12. The FTC's expert, Prochaska noted that a few cytisine studies that follow the standards of experts in the field have demonstrated modest efficacy for smoking cessation. Dkt. 207, p. 6, n.2, to Dkt. 207-2 p. 85.
2	February 7, 2017.	7, p. 255, 256, 267	
3		(Atts. 012, 013,	
4		014).	
5	348. Jason Cardiff stated in	Sands 1st Dec.	
6	Facebook Live advertising	(TRO PX-1), Dkt.	
7	for TBX-FREE that he was	7, p. 4, ¶ 8 & Dkt.	
8	going to share "what is	7, p. 259, ln. 8-11	
9	TBX-Free, how does it work,	(Att. 013).	
10	what is the secret to learn		
11	how to stop smoking		
12	cigarettes fast. I mean really		
13	fast, within a week, within		
14	ten days."		
15	349. Jason Cardiff stated in	Sands 1st Dec.	
16	Facebook Live advertising	(TRO PX-1), Dkt.	
17	for TBX-FREE that "We	7, p. 4, ¶ 8 & Dkt.	
18	have long-term smokers that	7, p. 259, ln. 12-15	
19	have learned this secret, that	(Att. 013).	
20	have been smoking for 30-		
21	plus years, two packs a day		
22	or more, and they no longer		
23	smoke cigarettes."		
24	350. Jason Cardiff stated in	Sands 1st Dec.	
25	Facebook Live advertising	(TRO PX-1), Dkt.	
26	for TBX-FREE that "you	7, p. 4, ¶ 8 & Dkt.	
27	should never need more than	7, p. 263, ln. 6-7	
28	one month."	(Att. 013).	

1	351. Jason Cardiff stated in	Sands 1st Dec.	
2	Facebook Live advertising	(TRO PX-1), Dkt.	
3	for TBX-FREE that “we	7, p. 4, ¶ 8 & Dkt.	
4	have an 88 percent success	7, p. 263, ln. 11	
5	rate.”	(Att. 013).	
6	352. Jason Cardiff stated in	Sands 1st Dec.	
7	Facebook Live advertising	(TRO PX-1), Dkt.	
8	for TBX-FREE that the	7, p. 4, ¶ 8 & Dkt.	
9	nicotine patch and gum	7, p. 263, ln. 25 –	
10	“doesn’t work with a 2	264, ln. 2 (Att.	
11	percent success rate.”	013).	
12			
13	353. Jason Cardiff appeared in	Sands 1st Dec.	
14	Facebook Live advertising	(TRO PX-1), Dkt.	
15	for TBX-FREE posted	7, p. 4, ¶ 9 & Dkt.	
16	February 24, 2017.	7, p. 268 269, 282	
17		(Atts. 015, 016,	
18		017).	
19	354. Jason Cardiff stated in	Sands 1st Dec.	
20	Facebook Live advertising	(TRO PX-1), Dkt.	
21	for TBX-FREE that “if	7, p. 4, ¶ 9 & Dkt.	
22	you’re smoking one of these	7, p. 272, ln. 9-13	
23	products, these nasty	(Att. 016).	
24	cigarette-based products. I		
25	have the solution for you,		
26	and I can show you in a few		
27	short days how you can stop		
28	smoking for the last time,		

1	once and for all.”	
2	355. Jason Cardiff stated in	Sands 1st Dec.
3	Facebook Live advertising	(TRO PX-1), Dkt.
4	for TBX-FREE that “We’ve	7, p. 4, ¶ 9 & Dkt.
5	developed the most	7, p. 274, ln. 15-18
6	successful stop-smoking	(Att. 016).
7	product on the market,	
8	period, plain and simple. I	
9	challenge anybody that tells	
10	me they have a more	
11	successful stop-smoking	
12	product. It doesn’t exist.”	
13	356. Jason Cardiff stated in	Sands 1st Dec.
14	Facebook Live advertising	(TRO PX-1), Dkt.
15	for TBX-FREE that “We’ve	7, p. 4, ¶ 9 & Dkt.
16	replaced the feeling of	7, p. 275, ln. 16 –
17	smoking with a non-nicotine	276, ln. 2 (Att.
18	based product. And in five	016).
19	short days -- five days -- you	
20	get all the nicotine out of	
21	your system. You now have	
22	the nicotine out of your	
23	system and you have the	
24	chance to become and live a	
25	smoke-free life. And that is	
26	how the product works. That	
27	is why it has an 88 percent	
28	success rate, and we can look	

1	here, we have an -- we have		
2	a proven track record of over		
3	an 88 percent success rate		
4	from some of the greatest		
5	medical institutions and		
6	universities in the United		
7	States and the U.K.”		
8	357. Jason Cardiff stated in	Sands 1st Dec.	
9	Facebook Live advertising	(TRO PX-1), Dkt.	
10	for TBX-FREE “You know	7, p. 4, ¶ 9 & Dkt.	
11	you’ve tried to stop. You’ve	7, p. 278, ln. 3-5	
12	tried to stop five, six, seven,	(Att. 016).	
13	ten times. This product will		
14	do it for you.”		
15			
16	358. Jason Cardiff stated in	Sands 1st Dec.	
17	Facebook Live advertising	(TRO PX-1), Dkt.	
18	for TBX-FREE “You know	7, p. 4, ¶ 9 & Dkt.	
19	the patches and gums won’t	7, p. 278, ln. 18-20	
20	give you any [money-back]	(Att. 016).	
21	guarantee because they know		
22	they don’t work.”		
23			
24	359. Defendants’ print advertising	Sands 1st Dec.	
25	for TBX-FREE said	(TRO PX-1), Dkt.	
26	“Smokers can now stop	7, p. 5, ¶¶ 11-12 &	
27	smoking with TBX.”	Dkt. 7, p. 287-289	
28		(Att. 020, 021,	

1		022).	
2	360. Defendants' print advertising	Sands 1st Dec.	
3	for TBX-FREE said "88%	(TRO PX-1), Dkt.	
4	Success Rate vs 4%	7, p. 5, ¶¶ 11-12 &	
5	combined success rate of the	Dkt. 7, p. 287-289	
6	patch & gum!"	(Att. 020, 021,	
7		022).	
8			
9	361. Defendants' print advertising	Sands 1st Dec.	
10	for TBX-FREE said	(TRO PX-1), Dkt.	
11	"Clinically Proven: New	7, p. 5, ¶¶ 11-12 &	
12	England Journal of	Dkt. 7, p. 287-289	
13	Medicine."	(Att. 020, 021,	
14		022).	
15	362. Eunjung Cardiff stated in	Sands 1st Dec.	
16	advertising for TBX-FREE,	(TRO PX-1), Dkt.	
17	"Someone who really cares	7, p. 38, ¶ 111 &	
18	for you asked me to reach	Dkt. 13, p. 66, 67-	
19	out to help you quit smoking	70 (Atts. 125, 126)	
20	for good. They say nothing	("Eunjung Better	
21	has worked, but they want	Than Me" ringless	
22	you to know about TBX	voicemail).	
23	Free, the stop smoking		
24	product that has changed so	Walker Dec. (PX-	
25	many lives. . . . I will	32), p. 19, ¶ 85	
26	absolutely help you quit for	(identifying the	
27	good and feel great about	voice of Eunjung	
28	yourself."	Cardiff in the	

1		ringless voicemail	
2		message previously	
3		identified as PX-1,	
4		Att. 125).	
5	363. Defendants' Facebook	Sands 3rd Dec.,	
6	advertisement for TBX-	PX-51), p. 3, ¶ 9 &	
7	FREE said that the product	p. 78 (Atts. 2, 24).	
8	was "PROVEN to curb		
9	cravings with an 88%		
10	success rate."		
11	364. Jason Cardiff and Eunjung	J. Cardiff 3rd RFA	
12	Cardiff admit that TBX-	Resp., p. 7, ¶ 141	
13	FREE was advertised as an	(Sanger Dec. (PX-	
14	effective smoking cessation	52), p. 1, ¶ 6 & p.	
15	product.	30 (Att. 3)).	
16			
17		E. Cardiff 3rd RFA	
18		Resp., p. 6, ¶ 135	
19		(Sanger Dec. (PX-	
20		52), p. 2, ¶ 10 & p.	
21		81 (Att. 7)).	
22	365. TBX-FREE was advertised as	SUF 324, 328,	
23	being more effective than	331-335, 343, 344,	
24	either nicotine patches or	351-352, 358, 360.	
25	nicotine gum in enabling		
26	cigarette smokers to quit		
27	smoking.		
28	366. Jason Cardiff and Eunjung	J. Cardiff 3rd RFA	

1	Cardiff admit that TBX-	Resp., p. 7, ¶ 143	
2	FREE was advertised as	(Sanger Dec. (PX-	
3	enabling many cigarette	52), p. 1, ¶ 6 & p.	
4	smokers to quit in seven to	30 (Att. 3)).	
5	ten days.		
6		E. Cardiff 3rd RFA	
7		Resp., p. 6, ¶ 137	
8		(Sanger Dec. (PX-	
9		52), p. 2, ¶ 10 & p.	
10		81 (Att. 7)).	
11	367. Jason Cardiff and Eunjung	J. Cardiff 3rd RFA	
12	Cardiff admit that TBX-	Resp., p. 7-8, ¶ 144	
13	FREE was advertised as	(Sanger Dec. (PX-	
14	having an 88 percent success	52), p. 1, ¶ 6 & p.	
15	rate.	30-31 (Att. 3)).	
16			
17		E. Cardiff 3rd RFA	
18		Resp., p. 6-7, ¶ 138	
19		(Sanger Dec. (PX-	
20		52), p. 2, ¶ 10 & p.	
21		81-82 (Att. 7)).	
22	368. TBX-FREE was advertised as	SUF 343.	
23	having an 88 percent success		
24	rate even among people who	See also SUF 325,	
25	have smoked cigarettes for	330, 334, 345, 351,	
26	more than 5 years.	356, 360, 363	
27		(88% success rate	
28		without reference	

1		to years of	
2		smoking).	
3	369. TBX-FREE was advertised as	SUF 350.	
4	so effective that smokers		
5	should not need to purchase		
6	more than one month of the		
7	product.		
8	370. TBX-FREE advertising	SUF 326, 337-339,	
9	represented that clinical	344, 356, 361.	
10	studies had been conducted		
11	on TBX-FREE.		
12	371. TBX-FREE advertising	SUF 337-339, 344,	
13	represented that those	346, 356, 360.	
14	clinical studies showed that		
15	TBX-FREE is an effective		
16	smoking cessation product.		
17	372. TBX-FREE advertising	SUF 334-336, 360.	
18	represented that those		
19	clinical studies showed that		
20	TBX-FREE was more		
21	effective than nicotine		
22	patches or nicotine gum in		
23	enabling users to stop		
24	smoking.		
25	373. TBX-FREE advertising	SUF 334-338, 344,	
26	represented that The New	361.	
27	England Journal of		
28	Medicine, Harvard Health		

1	Publications, and Johns		
2	Hopkins University had		
3	published clinical studies		
4	proving that TBX-FREE was		
5	an effective smoking		
6	cessation product.		
7	374. TBX-FREE advertising	SUF 344.	
8	represented that The New		
9	England Journal of	See also SUF 360-	
10	Medicine's clinical studies	361.	
11	showed that TBX-FREE is		
12	ten times more effective for		
13	smoking cessation than		
14	nicotine replacement		
15	therapy.		
16	FTC Response to SUF 341 – 374: The Cardiffs do not dispute that Jason Cardiff		
17	or Eunjung Cardiff made the statements attributed to them in TBX-FREE		
18	advertising, or that their Facebook and print advertising made the statements in		
19	question; nor do they dispute, among other facts, that TBX-FREE was advertised		
20	as an effective smoking cessation product, more effective than nicotine patches		
21	or gums, gums, that it had an 88% success rate, that clinical studies conducted on		
22	TBX-FREE proved that it was more effective than nicotine patches and gums,		
23	and that the New England Journal of Medicine and other journals had published		
24	studies proving its efficacy. Whether or not the defendants ceased making these		
25	claims in February 2018 is not relevant to their liability for deceptive advertising		
26	The relevant period when Defendants marketed TBX-FREE is 2015-2018, Dkt.		
27	1.		
28			

The timeframe for these facts, as alleged in the complaint, is relevant to the Cardiffs' individual liability for making deceptive advertising claims that were widely disseminated. Defendants' actions are proof of their individual liability for injunctive and monetary relief. In fact, the Cardiffs did not cease advertising TBX-FREE in February 2018. SUF 938.

The Cardiffs' assertion that there were clinical studies on the purported active ingredient in TBX-FREE is simply not relevant to the FTC's undisputed statement. In any event, Jason Cardiff's characterization of the findings of any scientific study is irrelevant to FTC SUF 341-374 and inadmissible under FRE 701. Dkt. 490, p. 15-18; see also, e.g., Dkt. 490-1, p. 27-30.

C. Defendants' Smoking Cessation Claims for TBX-FREE Were False or Unsubstantiated

FTC Fact	FTC Citation	Cardiff Admit/Objection
375. Jason Cardiff and Eunjung Cardiff admit that Defendants did not conduct any human clinical studies of TBX-FREE as a smoking cessation product.	J. Cardiff 3rd RFA Resp., p. 8, ¶ 147 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 31 (Att. 3)). E. Cardiff 3rd RFA Resp., p. 7, ¶ 141 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 82 (Att. 7)). See also Sands 1 st Dec. (TRO PX-1), Dkt. 7, p. 2,	Admit. Clinical studies did show that the active ingredient in TBX-FREE were effective smoking cessation agents. Out of a 60 person study, 13.8% quit smoking during a 12 month period with the aid of cytisine (Tabex) and the results were on par with "smokers receiving nicotine replacement

	<p>¶ 2 & Dkt. 7, p. 145 (Att. 001) (“Redwood is informed and believes that it did not perform any unpublished human clinical studies for TBX-FREE . . .”).</p> <p>Walker Dec. (PX-32), p. 10, ¶ 43.</p>	<p>therapy.” Ex. A, Declaration of Jason Cardiff ¶13.</p>
<p>FTC Response to SUF 375: Defendants do not dispute that they did not conduct any human clinical studies of TBX-FREE as a smoking cessation product. The remaining narrative should be disregarded as argument not related to the subject matter.</p>		
<p>376. The FTC submitted the Declaration and accompanying expert report of Judith J. Prochaska, Ph.D., MPH.⁷</p>	<p>Declaration of Judith J. Prochaska, PH.D., MPH (TRO PX-7), Dkt. 207 to 207-2.</p>	<p>Objection irrelevant and lacks timeframe. Defendants object to Dr. Prochaska’s declaration the basis that he assumed facts regarding Redwoods product</p>
<p>377. The Commission identified Dr. Prochaska as an</p>	<p>Sanger Dec. (PX-52), p. 2-3, ¶ 15.</p>	

⁷ The Cardiffs submitted a single objection to SUF 376-440; the FTC’s response begins on p. 227.

1	expert witness in	See also Sanger Dec.	changed the claims that
2	its September 26,	(PX-52), p. 2, ¶¶ 13-14	were made on their
3	2019 Initial	(FTC sent counsel for the	websites in or about
4	Disclosures.	Cardiffs copies of its four	February, 2018. Dkt.
5		expert reports in March	429-1 PX 38 at 101-102;
6		and April 2019).	Ex. A, Jason Cardiff
7	378. As of September	Expert Report of Judith J.	Declaration ¶¶ 7, 9, and
8	12, 2018, when she	Prochaska, Ph.D, MPH	46-53. The last air date
9	signed her expert	(hereafter “Prochaska	and services provided by
10	report in this case,	Expert Report”) (TRO	Mercury Media to
11	Dr. Prochaska was	PX-7), Dkt. 207, p. 4.	Redwood for Euepsia
12	a tenured Associate		Thin was on December
13	Professor of		25, 2017. Dkt. 432-1 at
14	Medicine with the		25. The last air date for
15	Stanford		TBX Free was on
16	Prevention		October 30, 2017. Dkt.
17	Research Center in		432-2 at 3-8.
18	the Department of		Dr. Prochaska's
19	Medicine and the		testimony should be
20	School of		excluded because the
21	Medicine at		FTC failed to disclose the
22	Stanford		compensation to be paid
23	University.		for her testimony; and a
24	379. Dr. Prochaska is a	Prochaska Expert Report	listing of any other cases
25	licensed clinical	(TRO PX-7), Dkt. 207, p.	in which the witness has
26	psychologist and	4.	testified as an expert at
27	holds medical		trial or by deposition
28	privileges with		within the preceding four

1	Stanford Hospital		years. Rule 26(a)(2).
2	& Clinics where		Moreover, Dr. Prohaska
3	she treats patients		was not provided
4	who have nicotine		accurate information
5	addiction.		about the modified
6	380. Dr. Prochaska has	Prochaska Expert Report	product claims made for
7	conducted	(TRO PX-7), Dkt. 207, p.	TBX-Free. Accordingly,
8	numerous scientific	4.	her opinions should be
9	research studies		excluded under the
10	focused on tobacco		Daubert test. Daubert v.
11	use and treatments		Merrell Dow Pharms.,
12	for tobacco		Inc., 509 U.S. 579, 589;
13	addiction.		FTC v. Qualcomm Inc.,
14	381. Dr. Prochaska's	Prochaska Expert Report	2018 U.S. Dist. LEXIS
15	research has	(TRO PX-7), Dkt. 207, p.	208197, *9, 2018 WL
16	focused on studies	4.	6460573
17	of tobacco use and		Defendants used
18	treatments for		numerous journals and
19	tobacco addiction		clinical studies to show
20	in diverse and		that cytosine, the active
21	vulnerable		ingredient in TBX-
22	populations with		FREE, is an effective
23	high smoking		smoking cessation. Ex.
24	prevalence.		A, Declaration of Jason
25	382. As of September	Prochaska Expert Report	Cardiff ¶12-16.
26	12, 2018, when Dr.	(TRO PX-7), Dkt. 207, p.	Clinical studies did show
27	Prochaska signed	4.	that the active ingredient
28	her expert report in		in TBX-FREE were

1	this case, she had		effective smoking
2	conducted eight		cessation agents. Out of a
3	clinical tobacco		60 person study, 13.8%
4	treatment trials		quit smoking during a 12
5	with more than		month period with the aid
6	1,800 smokers,		of cytisine (Tabex) and
7	spanning		the results were on par
8	adolescents to		with “smokers receiving
9	older adults.		nicotine replacement
10	383. Dr. Prochaska has	Prochaska Expert Report	therapy.” Ex. A,
11	been on the	(TRO PX-7), Dkt. 207, p.	Declaration of Jason
12	Editorial Boards of	4.	Cardiff ¶13.
13	the Cochrane		The relative difference in
14	Tobacco Addiction		smoking cessation
15	Review Group,		between cytisine and
16	JAMA Internal		placebo (relative rate,
17	Medicine, Tobacco		3.4) was higher than
18	Regulatory		previous studies have
19	Science, and		shown for varenicline
20	Health Psychology.		(2.3) and nicotine-
21	384. Dr. Prochaska has	Prochaska Expert Report	replacement therapy (1.6)
22	authored more than	(TRO PX-7), Dkt. 207, p.	over a 4 week period. Ex.
23	175 peer-reviewed	4.	A, Declaration of Jason
24	publications in the		Cardiff ¶14.
25	areas of		In a 12-month abstinence
26	randomized		study of 40 participants,
27	controlled clinical		8.4% of subjects quit
28	trial evaluations of		smoking with help of

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	smoking cessation interventions, nicotine addiction, smoking and disease, psychiatric disorders, medical education, multiple risk behavior change, mHealth, measurement development and psychometrics, dissemination, and quantitative methods.		cytisine as opposed to 2.4% of the placebo group. The 6% difference was deemed a 95% confidence level of effectiveness of cytisine. Ex. A, Declaration of Jason Cardiff ¶12. The FTC's expert, Prochaska noted that a few cytisine studies that follow the standards of experts in the field have demonstrated modest efficacy for
16 17 18 19 20 21 22 23 24 25 26 27 28	385. As of September 12, 2018, Dr. Prochaska was the immediate past-President and a Fellow of the Society for Research on Nicotine and Tobacco (SRNT), the international scientific society that aims to	Prochaska Expert Report (TRO PX-7), Dkt. 207, p. 4.	smoking cessation. Dkt. 207, p. 6, n.2, to Dkt. 207-2 p. 85.

1	stimulate the		
2	generation and		
3	dissemination of		
4	new knowledge		
5	concerning		
6	nicotine and		
7	tobacco from		
8	bench to bedside		
9	and through to		
10	health policy.		
11	386. Dr. Prochaska has	Prochaska Expert Report	
12	published in the	(TRO PX-7), Dkt. 207, p.	
13	New England	4.	
14	Journal of		
15	Medicine; the		
16	Journal of the		
17	American Medical		
18	Association		
19	(JAMA); JAMA		
20	Internal Medicine;		
21	JAMA Psychiatry;		
22	the British Medical		
23	Journal (BMJ);		
24	Addiction;		
25	Tobacco Control;		
26	Nicotine and		
27	Tobacco Research;		
28	Tobacco		

1	Regulatory		
2	Science;		
3	Circulation; and		
4	Oncology.		
5	387. Dr. Prochaska has	Prochaska Expert Report	
6	led and	(TRO PX-7), Dkt. 207, p.	
7	collaborated on a	4.	
8	number of highly		
9	cited meta-analyses		
10	of randomized		
11	controlled trials		
12	evaluating		
13	pharmacological		
14	treatments for		
15	tobacco addiction.		
16	388. In the interest of	Prochaska Expert Report	
17	advancing	(TRO PX-7), Dkt. 207, p.	
18	treatment of	5.	
19	tobacco use and		
20	addiction in		
21	medical practice,		
22	Dr. Prochaska		
23	developed,		
24	evaluated, and		
25	disseminated the		
26	Rx for Change		
27	tobacco treatment		
28	curricula		

1	(http://rxforchange.	
2	ucsf.edu) focusing	
3	on psychiatry and	
4	cardiology care	
5	providers.	
6	389. Based upon her	Prochaska Expert Report
7	education, training,	(TRO PX-7), Dkt. 207, p.
8	and professional	5.
9	experience, above,	
10	and including her	
11	curriculum vitae,	
12	Dr. Prochaska is an	
13	expert in tobacco	
14	epidemiology,	
15	tobacco use	
16	behaviors, nicotine	
17	addiction, and	
18	behavioral,	
19	pharmacological,	
20	and health policy	
21	tobacco cessation	
22	interventions;	
23	clinical trials	
24	design; systematic	
25	reviews and meta-	
26	analyses; consumer	
27	risk perceptions,	
28	tobacco product	

1	marketing,		
2	cigarette design,		
3	and the tobacco		
4	industry		
5	documents.		
6	390. According to Dr.	Prochaska Expert Report	
7	Prochaska, tobacco	(TRO PX-7), Dkt. 207, p.	
8	is the leading cause	5.	
9	of preventable		
10	death in the United		
11	States.		
12	391. Dr. Prochaska	Prochaska Expert Report	
13	stated that 7 in 10	(TRO PX-7), Dkt. 207, p.	
14	smokers want to	5.	
15	quit, and about half		
16	quit for 24-hours in		
17	any given year, but		
18	fewer than 7 in 100		
19	smokers are able to		
20	sustain abstinence		
21	for a year or more.		
22	392. Dr. Prochaska	Prochaska Expert Report	
23	stated that to	(TRO PX-7), Dkt. 207, p.	
24	support claims of	6-7.	
25	efficacy for a		
26	smoking cessation		
27	product, experts in		
28	the field would		

1	require scientific		
2	testing of the		
3	product itself in		
4	human subjects in		
5	double-blind,		
6	randomized,		
7	placebo-controlled		
8	trials showing		
9	statistically		
10	significant results		
11	in producing		
12	biochemically-		
13	verified tobacco		
14	abstinence.		
15	393. Dr. Prochaska	Prochaska Expert Report	
16	stated that these	(TRO PX-7), Dkt. 207, p.	
17	statistically	7.	
18	significant results		
19	should then be		
20	replicated to		
21	confirm product		
22	efficacy.		
23	394. Dr. Prochaska	Prochaska Expert Report	
24	stated that in vitro	(TRO PX-7), Dkt. 207, p.	
25	and animal studies	16 n.21.	
26	must be followed		
27	by human studies.		
28	395. Dr. Prochaska	Prochaska Expert Report	

1	stated that given	(TRO PX-7), Dkt. 207, p.
2	many potential	7.
3	confounds and	
4	sources of bias in	
5	tobacco cessation	
6	studies, there are	
7	general agreed-	
8	upon requirements	
9	for generating	
10	reliable scientific	
11	evidence in such	
12	studies.	
13	396. Dr. Prochaska	Prochaska Expert Report
14	stated that the	(TRO PX-7), Dkt. 207, p.
15	strongest study	8.
16	design is the	
17	randomized	
18	double-blind	
19	placebo-controlled	
20	trial.	
21	397. Dr. Prochaska	Prochaska Expert Report
22	stated that the	(TRO PX-7), Dkt. 207, p.
23	study should	7.
24	include a control	
25	group in order to	
26	isolate the effects	
27	of a treatment to	
28	determine whether	

1	it is indeed the		
2	cause of the effect		
3	of interest.		
4	398. Dr. Prochaska	Prochaska Expert Report	
5	stated that in a	(TRO PX-7), Dkt. 207, p.	
6	controlled	7.	
7	experiment,		
8	identical		
9	procedures are		
10	carried out in two		
11	groups with the		
12	difference being		
13	that the		
14	experimental group		
15	receives the		
16	treatment of		
17	interest and the		
18	control group does		
19	not.		
20	399. Dr. Prochaska	Prochaska Expert Report	
21	stated that placebos	(TRO PX-7), Dkt. 207, p.	
22	are inactive	8.	
23	treatments that are		
24	indistinguishable in		
25	form from the		
26	active treatment,		
27	and are used to		
28	offset the effect		

1	that knowing they		
2	are not receiving		
3	the new drug could		
4	have on		
5	participants'		
6	behavior, including		
7	dropping out of the		
8	study early.		
9	400. Dr. Prochaska	Prochaska Expert Report	
10	stated that in order	(TRO PX-7), Dkt. 207, p.	
11	to prevent	8.	
12	experimenter bias,		
13	the study should be		
14	double-blind as		
15	well as placebo-		
16	controlled, so that		
17	the researchers and		
18	their staff do not		
19	know who is		
20	receiving the active		
21	versus the placebo		
22	treatment.		
23	401. Dr. Prochaska	Prochaska Expert Report	
24	stated that	(TRO PX-7), Dkt. 207, p.	
25	randomization of	8.	
26	study participants		
27	allows		
28	investigators to test		

1	a new treatment		
2	without		
3	introducing known		
4	or unknown bias in		
5	treatment		
6	assignment.		
7	Proper		
8	randomization		
9	ensures that		
10	participants are		
11	assigned to a		
12	treatment arm by		
13	chance alone.		
14	402. Dr. Prochaska	Prochaska Expert Report	
15	stated proper	(TRO PX-7), Dkt. 207, p.	
16	randomization	8.	
17	ensures that		
18	participants are		
19	assigned to a		
20	treatment arm by		
21	chance alone.		
22	403. Dr. Prochaska	Prochaska Expert Report	
23	stated that	(TRO PX-7), Dkt. 207, p.	
24	randomization	9.	
25	should result in the		
26	creation of		
27	equitable groups		
28	on all measured		

1	and unmeasured		
2	factors, which		
3	means that		
4	participants in both		
5	treatment arms		
6	should be similar		
7	on demographic		
8	characteristics		
9	(e.g., gender, age,		
10	race/ethnicity,		
11	education level)		
12	and in their		
13	heaviness of		
14	smoking, number		
15	of past quit		
16	attempts, belief in		
17	their ability to quit,		
18	and other		
19	unmeasured		
20	potential		
21	confounding		
22	factors that may		
23	relate to treatment		
24	success.		
25	404. Dr. Prochaska	Prochaska Expert Report	
26	stated that	(TRO PX-7), Dkt. 207, p.	
27	randomization	9.	
28	enables differences		

1	between the groups	
2	observed over time	
3	to be attributed to	
4	the treatment	
5	effect.	
6	405. Dr. Prochaska	Prochaska Expert Report
7	stated that	(TRO PX-7), Dkt. 207, p.
8	replication of study	9 (citation omitted).
9	findings is needed	
10	to confirm that the	
11	treatment effects	
12	seen in a single	
13	double-blind	
14	placebo controlled	
15	randomized trial	
16	are real and will	
17	generalize to other	
18	samples.	
19	406. Dr. Prochaska	Prochaska Expert Report
20	stated that relapse	(TRO PX-7), Dkt. 207, p.
21	is the norm for	9.
22	smokers who	
23	attempt to quit.	
24	The longer an	
25	individual can	
26	sustain a quit	
27	attempt, the less	
28	likely he or she is	

1	to relapse.	
2	407. Dr. Prochaska	Prochaska Expert Report
3	stated that the	(TRO PX-7), Dkt. 207, p.
4	general standard in	9-10.
5	the field for	
6	documenting	
7	treatment efficacy	
8	is sustained	
9	abstinence of at	
10	least 6 months	
11	from treatment	
12	start or quit date.	
13	408. Dr. Prochaska	Prochaska Expert Report
14	stated that most	(TRO PX-7), Dkt. 207, p.
15	tobacco cessation	10.
16	drug trials report	
17	on 6-months	
18	sustained	
19	abstinence as their	
20	primary outcome,	
21	and a statistically	
22	significant	
23	difference at $p <$	
24	0.05 between	
25	treatment and	
26	control is the	
27	convention for	
28	determining	

1	efficacy.	
2	409. Dr. Prochaska	Prochaska Expert Report
3	stated that to	(TRO PX-7), Dkt. 207, p.
4	address false	10.
5	reporting of	
6	quitting smoking,	
7	experts would	
8	expect clinic-based	
9	randomized	
10	controlled tobacco	
11	treatment trials to	
12	use biochemical	
13	verification of	
14	abstinence by	
15	testing carbon	
16	monoxide in	
17	expired air; testing	
18	of cotinine in	
19	saliva, urine, or	
20	plasma; or testing	
21	of anabasine in	
22	urine.	
23	410. Dr. Prochaska	Prochaska Expert Report
24	stated that if a	(TRO PX-7), Dkt. 207, p.
25	clinical trial's	10.
26	sample size is too	
27	small, the study	
28	will not have	

1	sufficient power to		
2	detect a treatment		
3	effect.		
4	411. Dr. Prochaska	Prochaska Expert Report	
5	stated that a power	(TRO PX-7), Dkt. 207, p.	
6	analysis should be	10.	
7	used to calculate		
8	the minimum		
9	number of		
10	participants		
11	required so the		
12	study is reasonably		
13	likely to detect a		
14	clinically		
15	meaningful effect.		
16	412. Dr. Prochaska	Prochaska Expert Report	
17	stated that although	(TRO PX-7), Dkt. 207, p.	
18	it is sometimes	11.	
19	acceptable to rely		
20	on testing of one		
21	product to support		
22	the efficacy of		
23	another one (e.g.,		
24	for branded to		
25	generic versions of		
26	a drug), it is not		
27	acceptable when		
28	the dose or		

1	delivery		
2	mechanism is		
3	different.		
4	413. Dr. Prochaska	Prochaska Expert Report	
5	stated that in the	(TRO PX-7), Dkt. 207, p.	
6	field of tobacco	11.	
7	cessation		
8	treatment, the		
9	standard of practice		
10	for nicotine		
11	replacement		
12	therapy has been to		
13	conduct double-		
14	blind placebo		
15	randomized		
16	controlled trials for		
17	each type of		
18	delivery (i.e.,		
19	transdermal patch,		
20	gum, lozenge,		
21	inhaler, nasal		
22	spray, mouth		
23	spray, and most		
24	recently, oral film),		
25	rather than		
26	extrapolating from		
27	the testing of one		
28	product to support		

1	the efficacy of		
2	another.		
3	414. Dr. Prochaska	Prochaska Expert Report	
4	stated that experts	(TRO PX-7), Dkt. 207, p.	
5	in the field of	14.	
6	smoking cessation		
7	would require at		
8	least two double-		
9	blind, randomized,		
10	controlled trials		
11	producing		
12	statistically		
13	significant		
14	evidence that		
15	TBX-FREE users		
16	have a significantly		
17	greater likelihood		
18	of biochemically-		
19	verified tobacco		
20	abstinence relative		
21	to placebo to		
22	support the claim		
23	that TBX-FREE is		
24	an effective		
25	smoking cessation		
26	product and the		
27	claim that TBX-		
28	FREE is more		

1	effective than		
2	nicotine patches or		
3	nicotine gum.		
4	415. Dr. Prochaska	Prochaska Expert Report	
5	stated that the bio-	(TRO PX-7), Dkt. 207, p.	
6	chemically	14.	
7	confirmed tobacco		
8	abstinence for		
9	TBX-FREE		
10	subjects would		
11	have to reach 88		
12	percent or higher		
13	as compared to		
14	placebo to support		
15	the claim that		
16	TBX-FREE has an		
17	88 percent success		
18	rate.		
19	416. Dr. Prochaska	Prochaska Expert Report	
20	stated that a	(TRO PX-7), Dkt. 207, p.	
21	study's design	14.	
22	must include a		
23	sufficient number		
24	of subjects who		
25	reported smoking		
26	for more than 5		
27	years to support a		
28	subgroup analysis		

1	and specific claim		
2	made about such		
3	smokers.		
4	417. Dr. Prochaska's	Prochaska Expert Report	
5	unrebutted expert	(TRO PX-7), Dkt. 207, p.	
6	opinion is that for	14.	
7	the claims that		
8	TBX-FREE		
9	enables cigarette		
10	smokers to quit in		
11	seven to ten days		
12	and smokers		
13	should not need to		
14	purchase more than		
15	one month of		
16	TBX-FREE (i.e.,		
17	individuals will be		
18	tobacco-free after		
19	one month),		
20	experts would		
21	consider		
22	statistically		
23	significant results		
24	against placebo at		
25	the specified time		
26	points (i.e., 7 to 10		
27	days and 1 month)		
28	as preliminary		

1	evidence of		
2	efficacy, and		
3	would require		
4	more evidence		
5	because the		
6	outcome of interest		
7	is sustained		
8	abstinence 6-		
9	months or longer.		
10	418. To evaluate the	Prochaska Expert Report	
11	claims for TBX-	(TRO PX-7), Dkt. 207, p.	
12	FREE, Dr.	6; Dkt. 207, p. 75 to Dkt.	
13	Prochaska	207-2, p. 85.	
14	reviewed the		
15	documents		
16	submitted by the		
17	Defendants as		
18	substantiation for		
19	TBX-FREE.		
20	419. Dr. Prochaska also	Prochaska Expert Report	
21	conducted an	(TRO PX-7), Dkt. 207, p.	
22	independent search	6, n.2; Dkt. 207, p. 14;	
23	of the scientific	Dkt. 207, p. 68-69.	
24	literature to		
25	determine whether		
26	there was other		
27	scientific support		
28	for the challenged		

1	TBX-FREE	
2	claims.	
3	420. Dr. Prochaska	Prochaska Expert Report
4	found no study of	(TRO PX-7), Dkt. 207, p.
5	TBX-FREE in the	7, 14, 14 n.16.
6	published scientific	
7	literature, or any	
8	registered trials of	
9	the product in	
10	clinicaltrials.gov.	
11	421. The materials Dr.	Prochaska Expert Report
12	Prochaska received	(TRO PX-7), Dkt. 207, p.
13	from the	7.
14	Commission for	
15	her review, which	
16	had been provided	
17	by Redwood	
18	Scientific	
19	Technologies, did	
20	not contain any	
21	studies of TBX-	
22	FREE.	
23	422. The studies	Prochaska Expert Report
24	contained in the	(TRO PX-7), Dkt. 207, p.
25	materials Dr.	7.
26	Prochaska received	
27	from the	
28	Commission for	

1	her review, which		
2	had been provided		
3	by Redwood		
4	Scientific		
5	Technologies,		
6	related to products		
7	other than TBX-		
8	FREE.		
9	423. Dr. Prochaska's	Prochaska Expert Report	
10	unrebutted expert	(TRO PX-7), Dkt. 207, p.	
11	opinion is that	7.	
12	experts in the field		
13	of smoking		
14	cessation would		
15	not simply		
16	extrapolate to		
17	TBX-FREE from		
18	the results of		
19	studies conducted		
20	on other products.		
21	424. Dr. Prochaska's	Prochaska Expert Report	
22	search of the	(TRO PX-7), Dkt. 207, p.	
23	scientific literature	15.	
24	relating to cytosine		
25	did not uncover		
26	any study		
27	supporting the		
28	efficacy of TBX-		

1	FREE for smoking		
2	cessation.		
3	425. Dr. Prochaska's	Prochaska Expert Report	
4	unrebutted expert	(TRO PX-7), Dkt. 207, p.	
5	opinion is that	15.	
6	most scientific		
7	research on		
8	cytisine for		
9	smoking cessation		
10	has been on a		
11	tablet sold in		
12	Eastern Europe		
13	under the brand		
14	name TABEX, and		
15	using the dosing		
16	regimen		
17	recommended for		
18	that product.		
19	426. Dr. Prochaska	Prochaska Expert Report	
20	stated that the	(TRO PX-7), Dkt. 207, p.	
21	efficacy of cytisine	16, 17.	
22	in one modality		
23	(for example 1.5		
24	mg TABEX		
25	tablets) cannot be		
26	assumed to hold		
27	true for a diluted		
28	dose and/or		

1	another delivery	
2	form, such as the	
3	homeopathic TBX-	
4	FREE oral film	
5	strip.	
6	427. Dr. Prochaska	Prochaska Expert Report
7	stated that the best	(TRO PX-7), Dkt. 207, p.
8	available evidence	17.
9	for cytisine comes	
10	from two published	
11	double-blind,	
12	randomized	
13	controlled tests of	
14	TABEX against	
15	placebo with	
16	bioconfirmation of	
17	abstinence.	
18	428. Dr. Prochaska	Prochaska Expert Report
19	stated that even	(TRO PX-7), Dkt. 207, p.
20	these two trials	17.
21	showed abstinence	
22	rates of only 8.4%	
23	and 10.6% at 6 to	
24	12 months follow-	
25	up.	
26	429. Dr. Prochaska	Prochaska Expert Report
27	stated that the	(TRO PX-7), Dkt. 207, p.
28	results of research	16.

1	on TABEX cannot		
2	be extrapolated to		
3	TBX-FREE,		
4	because the two		
5	products are very		
6	different in dose		
7	and delivery (tablet		
8	versus dissolvable		
9	film strip).		
10	430. Dr. Prochaska	Prochaska Expert Report	
11	stated that	(TRO PX-7), Dkt. 207, p.	
12	differences	16.	
13	between the two		
14	products in the		
15	means of delivery		
16	can affect the		
17	pharmacokinetics		
18	of absorption,		
19	distribution,		
20	metabolism, and		
21	excretion of		
22	cytisine.		
23	431. Dr. Prochaska	Prochaska Expert Report	
24	stated although	(TRO PX-7), Dkt. 207, p.	
25	there are studies of	19.	
26	cytisine		
27	formulations in		
28	oral films, they are		

1	uncontrolled and		
2	the products tested		
3	are significantly		
4	different from		
5	TBX-FREE, so the		
6	results cannot be		
7	extrapolated to		
8	TBX-FREE		
9	432. Dr. Prochaska is not	Prochaska Expert Report	
10	aware of any	(TRO PX-7), Dkt. 207, p.	
11	tobacco cessation	18.	
12	drug or other		
13	treatment that can		
14	legitimately claim		
15	an 88% success		
16	rate at a		
17	meaningful follow-		
18	up interval among		
19	established		
20	smokers.		
21	433. It was Dr	Prochaska Expert Report	
22	Prochaska's	(TRO PX-7), Dkt. 207, p.	
23	unrebutted expert	20.	
24	opinion that a		
25	claim that TBX-		
26	FREE was an		
27	effective smoking		
28	cessation product		

1	is not	
2	substantiated.	
3	434. It was Dr	Prochaska Expert Report
4	Prochaska's	(TRO PX-7), Dkt. 207, p.
5	unrebutted expert	6, 20.
6	opinion that a	
7	claim that TBX-	
8	FREE is more	
9	effective than	
10	either nicotine	
11	patches or nicotine	
12	gum in enabling	
13	cigarette smokers	
14	to stop smoking is	
15	not substantiated.	
16	435. It was Dr	Prochaska Expert Report
17	Prochaska's	(TRO PX-7), Dkt. 207, p.
18	unrebutted expert	6, 20.
19	opinion that a	
20	claim that TBX-	
21	FREE enables	
22	many cigarette	
23	smokers to quit in	
24	seven to ten days	
25	was not	
26	substantiated.	
27	436. It was Dr	Prochaska Expert Report
28	Prochaska's	(TRO PX-7), Dkt. 207, p.

1	unrebutted expert	6, 20.	
2	opinion that a		
3	claim that TBX-		
4	FREE has an 88		
5	percent success		
6	rate, including		
7	among people who		
8	have smoked		
9	cigarettes for more		
10	than 5 years, was		
11	not substantiated.		
12	437. It was Dr	Prochaska Expert Report	
13	Prochaska's	(TRO PX-7), Dkt. 207, p.	
14	unrebutted expert	6, 20.	
15	opinion that a		
16	claim that smokers		
17	should not need to		
18	purchase more than		
19	one month of		
20	TBX-FREE was		
21	not substantiated.		
22	438. Defendants have	Sands 1st Dec. (TRO PX-	
23	admitted that their	1), Dkt. 7, p. 2, ¶ 2 &	
24	88% success rate	Dkt. 7, p. 115 (Att. 001),	
25	claim was	(Redwood's response to	
26	erroneous.	FTC's Civil Investigative	
27		Demand says that "a	
28		chart regarding TBX that	

1		referenced an ‘88%
2		success rate’ ... should
3		not have been on the
4		[web]site....”).
5	439. Based on her	Prochaska Expert Report
6	expertise and	(TRO PX-7), Dkt. 207, p.
7	review, Dr.	6, 20.
8	Prochaska	
9	concluded that a	
10	claim that smokers	
11	should not need to	
12	purchase more than	
13	one month of	
14	TBX-FREE was	
15	not substantiated	
16	by materials	
17	produced by	
18	Redwood	
19	Scientific	
20	Technologies or by	
21	the scientific	
22	literature.	
23	440. The Cardiffs did not	Sanger Dec. (PX-52), p.
24	submit any expert	3, ¶ 16.
25	report disagreeing	
26	with Dr.	
27	Prochaska’s	
28	conclusions about	

1	TBX-FREE or		
2	supporting the		
3	TBX-FREE claims		
4	challenged in this		
5	proceeding.		

FTC Response to SUF 376 – 440: The Cardiffs do not dispute any of the foregoing facts concerning Dr. Prochaska’s qualifications or explanations of the standards that smoking cessation experts use to determine whether claims for a specific smoking cessation product are substantiated, or her evaluation of the challenged claims made for TBX-FREE using those standards.

Dr. Prochaska’s expert report is relevant and helpful to the Court. FRE 702, 702. She has described to the Court her credentials and expertise in this area of science was and has opined, as an expert in smoking cessation, on whether the claims challenged in the Commission’s complaint were substantiated. That is exactly what she did, setting forth first the standards that experts in the field would use to answer that question and then examining the relevant scientific evidence.

The Cardiffs are wrong when they state that Dr. Prochaska failed to state how much she is being paid or the tobacco cases in which she has participated. See Dkt. 207, p. 5.

Jason Cardiff’s characterization of the findings of any scientific study is inadmissible under FRE 701 because he is providing testimony based on “scientific, technical, or other specialized knowledge within the scope of FRE 702,” but has not been qualified as an expert. Dkt. 490, p. 15-18; see also, e.g., Dkt. 490-1, p. 27-30. Dr. Prochaska explained why none of those studies

substantiate claims for TBX-FREE.

The timeframe is the period when Defendants marketed and sold TBX-FREE (2015-2018, see Dkt. 1), and these facts are relevant to the Cardiffs' individual liability for injunctive and monetary relief.

D. Defendants' Claims that TBX-FREE Was Proven To Be Effective Were False

FTC Fact	FTC Citation	Cardiff Admit/Objection
441.No clinical studies have been conducted on TBX-FREE assessing the product's efficacy for smoking cessation.	Prochaska Expert Report (TRO PX-7), Dkt. 207, p. 7, 14 n.16 (found no published or registered trials of TBX-FREE). Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 145 (Att. 001) ("Redwood is informed and believes that it did not perform any unpublished human clinical studies for TBX-FREE . . ."). Walker Dec. (PX-32), p. 11, ¶ 43 (to her	Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶7, 9, and 46-53. The last air date and services provided by Mercury Media to Redwood for Euepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on

	knowledge, Redwood never conducted any scientific testing of TBX-FREE).	October 30, 2017. Dkt. 432-2 at 3-8. Clinical studies did show that the active ingredient in TBX-FREE were effective smoking
	SUF 375.	cessation agents. Out of a
442. Clinical studies of TBX-FREE were not conducted on 10,600 people.	SUF 420 441.	60 person study, 13.8% quit smoking during a 12 month period with the aid
443. Clinical studies have not shown TBX-FREE to have an 88% success rate.	SUF 375, 420, 438, 441. See also SUF 432, 436.	of cytisine (Tabex) and the results were on par with “smokers receiving nicotine replacement
444. The New England Journal of Medicine, did not publish clinical studies or other material proving that TBX-FREE is an effective smoking cessation product.	Appel Dec. (PX-50), p. 1-2, ¶ 4.	therapy.” Ex. A, Declaration of Jason Cardiff ¶13.
445. The New England Journal of Medicine did not publish clinical	Appel Dec. (PX-50), p. 1-2, ¶ 4.	

1	studies or other		
2	material		
3	demonstrating that		
4	users of TBX-		
5	FREE had an 88%		
6	success rate.		
7	FTC Response to SUF 441 – 445: The Cardiffs do not dispute that no clinical		
8	studies have been conducted on TBX-FREE.		
9			
10	Defendants admitted in their responses to the Commission’s CIDs that they did		
11	not conduct clinical studies on TBX-FREE, and the Commission’s smoking		
12	cessation expert found no published or registered trials of the product.		
13			
14	The Cardiffs’ timeframe objection is irrelevant to the question of whether clinical		
15	studies have been conducted on TBX-FREE. These facts are relevant to proving		
16	that the Cardiffs’ advertising claims were deceptive and to their individual		
17	liability for injunctive and monetary relief.		
18			
19	Their extraneous narrative does not address these facts and should be		
20	disregarded.		
21	446.The New England	Appel Dec. (PX-50), p.	Objection irrelevant and
22	Journal of	1-2, ¶ 3-5.	lacks timeframe.
23	Medicine filed a		Defendants stopped
24	lawsuit against		marketing and changed
25	Redwood Scientific		the claims that were
26	Technologies		made on their websites in
27	alleging that		or about February, 2018.
28	Redwood had		Dkt. 429-1 PX 38 at 101-

1	falsely claimed in	102; Ex. A, Jason Cardiff
2	Internet advertising	Declaration ¶¶ 7, 9, and
3	-- the tbxfree.com	46-53. The last air date
4	website and a	and services provided by
5	YouTube video	Mercury Media to
6	linked to the	Redwood for Eupepsia
7	website – that	Thin was on December
8	TBX-FREE had	25, 2017. Dkt. 432-1 at
9	been favorably	25. The last air date for
10	studied by a	TBX Free was on
11	number of medical	October 30, 2017. Dkt.
12	institutions and	432-2 at 3-8
13	journals, including	
14	the New England	
15	Journal of	
16	Medicine (NEJM),	
17	and that the NEJM	
18	had found in	
19	clinical trials that	
20	users of TBX-	
21	FREE succeeded in	
22	quitting smoking	
23	88% of the time.	

FTC Response to SUF 446: The Cardiffs do not dispute that the New England Journal of Medicine sued them. Furthermore, they did not cease advertising in February 2018. SUF 938. The Declaration of Joseph Appel, Senior Counsel for the Massachusetts Medical Society, states the timeframe: the complaint was filed “on or around May 3, 2017.” Dkt. 433-6, p. 2, ¶ 3. This fact is relevant to

the Cardiffs' individual liability for injunctive and monetary relief.

447.[reserved]

448.[reserved]

449.[reserved]

IV. Eupepsia Thin

A. Defendants' Marketing of Eupepsia Thin

FTC Fact	FTC Citation	Cardiff Admit/Objection
450. The target audience for Eupepsia Thin was people who wanted to lose weight.	Adkinson-Connor Dec. (PX-38), p. 12, ¶ 52.	Admit
451. Jason Cardiff and Eunjung Cardiff admit that Defendants advertised an oral film strip called Eupepsia Thin.	J. Cardiff 3rd RFA Resp., p. 10, ¶ 158 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 33 (Att. 3)). E. Cardiff 3rd RFA Resp., p. 9, ¶ 152 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 84 (Att. 7)).	Admit
452. Jason Cardiff and Eunjung Cardiff admit that Defendants sold	J. Cardiff 3rd RFA Resp., p. 10, ¶ 159 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 33 (Att. 3)).	Admit

1	Eupepsia Thin		
2	from at least 2017	E. Cardiff 3rd RFA	
3	to 2018.	Resp., p. 9, ¶ 153 (Sanger	
4		Dec. (PX-52), p. 2, ¶ 10	
5		& p. 84 (Att. 7)).	
6	453. According to the	Sands 1st Dec. (TRO PX-	Admit
7	Eupepsia Thin	1), Dkt. 7, p. 19, ¶ 60 &	
8	package label, each	Dkt. 10-1, p. 14-15 (Att.	
9	film strip contains	095).	
10	Paullinia Cupana		
11	H.B.K. et K, 1X.	See also Sands 1st Dec.	
12		(TRO PX-1), Dkt. 7, p. 6,	
13		¶ 14 & Dkt. 10, p. 51	
14		(Att. 026) (bethinrx.com	
15		website).	
16			
17		Report of David A.	
18		Levitsky, Ph.D.	
19		(hereafter “Levitsky	
20		Expert Report”) (TRO	
21		PX-8), Dkt. 208, p. 7, ¶	
22		I.2.A.i.	
23	454. In its response to	Sands 1st Dec. (TRO PX-	Admit
24	the Commission’s	1), Dkt. 7, p. 2-3, ¶ 3 &	
25	CID, Redwood	Dkt. 7, p.158 (Att. 003).	
26	Scientific stated		
27	that gross 2017		
28	sales revenues for		

1	Eupepsia Thin (not		
2	including retail		
3	sales) were		
4	\$1,913,446.79.		
5	455. In its response to	Sands 1st Dec. (TRO PX-	Admit
6	the Commission's	1), Dkt. 7, p. 2-3, ¶ 3 &	
7	CID, Redwood	Dkt. 7, p. 158 (Att. 003).	
8	Scientific stated		
9	that gross 2018		
10	sales revenues for		
11	Eupepsia Thin (not		
12	including retail		
13	sales) through		
14	April 30, 2018		
15	were \$343,247.68.		
16	456. In its response to	Sands 1st Dec. (TRO PX-	Admit
17	the Commission's	1), Dkt. 7, p. 2-3, ¶ 3 &	
18	CID, Redwood	Dkt. 7, p. 164 (Att. 003).	
19	Scientific stated		
20	that Eupepsia Thin		
21	refunds in 2017		
22	(including some		
23	but not all		
24	chargebacks) were		
25	\$245,690.57.		
26	457. In its response to	Sands 1st Dec. (TRO PX-	Admit
27	the Commission's	1), Dkt. 7, p. 2-3, ¶ 3 &	
28	CID, Redwood	Dkt. 7, p. 165 (Att. 003).	

1	Scientific stated		
2	that Eupepsia Thin		
3	refunds in 2018		
4	(including some		
5	but not all		
6	chargebacks) were		
7	\$64,544.88 through		
8	April 30, 2018.		
9	458. In response to the	Sands 3rd Dec. (PX-51),	Admit
10	Commission's	p. 18, ¶ 53 & p. 1900	
11	Civil Investigative	(Att. 128).	
12	Demand, Redwood		
13	Scientific reported	See SUF 454-457.	
14	net Eupepsia Thin		
15	sales of		
16	\$1,946,459.02 for		
17	2017 through April		
18	2018.		
19	459. Defendants	Walker Dec. (PX-32), p.	Objection irrelevant and
20	advertised	5, ¶ 21.	lacks timeframe.
21	Eupepsia Thin		Defendants stopped
22	using long-form		marketing and changed
23	and short-form		the claims that were
24	television		made on their websites in
25	commercials,		or about February, 2018.

1	websites, and		Dkt. 429-1 PX 38 at 101-
2	social media. ⁸		102; Ex. A, Jason Cardiff
3	460. Defendants	Adkinson-Connor Dec.	Declaration ¶¶7, 9, and
4	advertised	(PX-38), p. 1, ¶ 5; p. 2-3,	46-53. The last air date
5	Eupepsia Thin	¶ 10 & p. 57-515 (Att. 9);	and services provided by
6	through national	p. 5-6, ¶¶ 22-24.	Mercury Media to
7	television		Redwood for Eupepsia
8	campaigns.	Sands 1st Dec. (TRO PX-	Thin was on December
9		1), Dkt. 7, p. 4-5, ¶ 13 &	25, 2017. Dkt. 432-1 at
10		Dkt. 10, p. 2-46 (Att.	25. The last air date for
11		023, 024, 25).	TBX Free was on
12			October 30, 2017. Dkt.
13		Sands 3 rd Dec. (TRO PX-	432-2 at 3-8
14		51), p. 9-11, ¶¶ 37-39.	
15			
16		Cabrinha Dec. (PX-41),	
17		p. 1-2, ¶¶ 3, 5 & p. 14-24	
18		(Att. 2).	
19	461. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
20	Eunjung Cardiff	p. 13, ¶ 178 (Sanger Dec.	
21	admit that FX Web	(PX-52), p. 1, ¶ 6 & p. 36	
22	Media produced	(Att. 3)).	
23	Eupepsia Thin		
24	television	E. Cardiff 3rd RFA	

⁸ The Cardiffs submitted a single objection to SUF 459-478; the FTC's response begins on p. 244.

1	advertisements for	Resp., p. 11, ¶ 172	
2	Defendants.	(Sanger Dec. (PX-52), p.	
3		2, ¶ 10 & p. 86 (Att. 7)).	
4			
5		See also Sherrell Dec.	
6		(PX-43), p. 2, ¶ 4.	
7	462. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
8	Eunjung Cardiff	p. 10, ¶ 160 (Sanger Dec.	
9	admit that	(PX-52), p. 1, ¶ 6 & p. 33	
10	Corporate	(Att. 3)).	
11	Defendants		
12	purchased media	E. Cardiff 3rd RFA	
13	time for Eupepsia	Resp., p. 9, ¶ 154 (Sanger	
14	Thin television	Dec. (PX-52), p. 2, ¶ 10	
15	advertisements	& p. 84 (Att. 7)).	
16	from Cannella		
17	Response		
18	Television, LLC.		
19	463. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
20	Eunjung Cardiff	p. 10, ¶ 163 (Sanger Dec.	
21	admit that Cannella	(PX-52), p. 1, ¶ 6 & p. 33	
22	Response	(Att. 3)).	
23	Television, LLC,		
24	arranged for	E. Cardiff 3rd RFA	
25	Eupepsia Thin	Resp., p. 9, ¶ 157 (Sanger	
26	television	Dec. (PX-52), p. 2, ¶ 10	
27	advertisements to	& p. 84 (Att. 7)).	
28	be broadcast on		

1	national cable	
2	television.	
3	464. Cannella purchased	Adkinson-Connor Dec.
4	media time for	(PX-38), p. 6, ¶¶ 23-24;
5	Eupepsia Thin	p. 2-3, ¶ 10 & p. 77-102,
6	advertising in 2017	321-515 (Att. 9).
7	and 2018.	
8		Walker Dec. (PX-32), p.
9		8, ¶ 34.
10	465. In 2017-2018,	Adkinson-Connor Dec.
11	Cannella purchased	(PX-38), p. 6, ¶¶ 23-24;
12	media time for	p. 2-3, ¶ 10 & p. 77-102
13	Eupepsia Thin	(Att. 9).
14	long-form ads	
15	entitled EPEP LF	
16	V1, EPEP LF V2,	
17	EPEP LF V2	
18	SCRIPPS, and	
19	EPEP LF V3	
20	W/HE30 from	
21	television stations	
22	that aired them	
23	across the United	
24	States.	
25	466. In 2017, Cannella	Adkinson-Connor Dec.
26	purchased media	(PX-38), p. 6, ¶ 23; p. 2-
27	time for the	3, ¶ 10 & p. 321-515
28	Eupepsia Thin	(Att. 9).

1	short-form ads	
2	entitled U2KM	
3	(using the	
4	www.controlthewe	
5	ight.com website)	
6	and U2JP (using	
7	the	
8	www.thinyounow.	
9	com website).	
10	467. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,
11	Eunjung Cardiff	p. 11, ¶ 164 (EPEP LF
12	admit that Cannella	V1); ¶ 165 (EPEP LF
13	purchased media	V2); ¶ 166 (EPEP LF V2
14	time for Eupepsia	SCRIPPS); ¶ 167 (EPEP
15	Thin TV ads EPEP	LF V3 W/HE30) (Sanger
16	LF V1, EPEP LF	Dec. (PX-52), p. 1, ¶ 6 &
17	V2, EPEP LF V2	p. 34 (Att. 3)).
18	SCRIPPS, and	
19	EPEP LF V3	E. Cardiff 3rd RFA
20	W/HE30 from	Resp., p. 9-10, ¶ 158
21	television stations	(EPEP LF V1); ¶ 159
22	that aired them	(EPEP LF V2); ¶ 160
23	across the United	(EPEP LF V2 SCRIPPS);
24	States.	¶ 161 (EPEP LF V3
25		W/HE30) (Sanger Dec.
26		(PX-52), p. 2, ¶ 10 & p.
27		84-85 (Att. 7)).
28	468. Cannella purchased	Sands 3rd Dec. (PX-51),

1	media time for 27	p. 12, ¶ 41 & p. 1685	
2	airings of the long-	(Att. 125).	
3	form ad entitled		
4	EPEP LF VI with	Adkinson-Connor Dec.	
5	master number	(PX-38), p. 5-6, ¶ 22; p.	
6	475750 that it	2-3, ¶ 10 & p. 77 (Att. 9).	
7	produced to the		
8	FTC as a file bates-		
9	stamped CAN-		
10	CARDIFF0000040		
11	.		
12	469. Cannella purchased	Sands 3rd Dec. (PX-51),	
13	media time for 686	p. 12, ¶ 41 & p. 1685	
14	airings of the long-	(Att. 125).	
15	form ad entitled		
16	EPEP LF V2 with	Adkinson-Connor Dec.	
17	master number	(PX-38), p. 5-6, ¶ 22; p.	
18	476085 that it	2-3, ¶ 10 & p. 77-87 (Att.	
19	produced to the	9).	
20	FTC as a file bates-		
21	stamped CAN-		
22	CARDIFF0000033		
23	.		
24	470. Cannella purchased	Sands 3rd Dec. (PX-51),	
25	media time for 105	p. 12, ¶ 41 & p. 1685	
26	airings of the long-	(Att. 125).	
27	form ad entitled		
28	EPEP LF V2	Adkinson-Connor Dec.	

1	SCRIPPS with	(PX-38), p. 5-6, ¶ 22; p.	
2	master number	2-3, ¶ 10 & p. 87-88 (Att.	
3	476675 that it	9).	
4	produced to the		
5	FTC as a file bates-		
6	stamped CAN-		
7	CARDIFF0000039		
8	.		
9	471. Cannella purchased	Sands 3rd Dec. (PX-51),	
10	media time for 941	p. 12, ¶ 41 & p. 1685	
11	airings of the long-	(Att. 125).	
12	form ad entitled		
13	EPEP LF V3	Adkinson-Connor Dec.	
14	W/HE30 with	(PX-38), p. 5-6, ¶ 22; p.	
15	master number	2-3, ¶ 10 & p. 88-102	
16	483044 that it	(Att. 9).	
17	produced to the		
18	FTC as a file bates-		
19	stamped CAN-		
20	CARDIFF0000035		
21	.		
22	472. Cannella purchased	Sands 3rd Dec. (PX-51),	
23	media time for	p. 12, ¶ 41 & p. 1686	
24	5,561 airings of the	(Att. 125).	
25	short-form ad		
26	entitled U2KM	Adkinson-Connor Dec.	
27	(using the	(PX-38), p. 5-6, ¶ 22; p.	
28	www.controlthewe	2-3, ¶ 10 & p. 321-406	

1	ight.com website)	(Att. 9).	
2	that it produced to		
3	the FTC as a file		
4	bates-stamped		
5	CAN-		
6	CARDIFF0000046		
7	.		
8	473. Cannella purchased	Sands 3rd Dec. (PX-51),	
9	media time for 719	p. 12, ¶ 41 & p. 1686	
10	airings of the short-	(Att. 125).	
11	form ad entitled		
12	U2JP that it	Adkinson-Connor Dec.	
13	produced to the	(PX-38), p. 5-6, ¶ 22; p.	
14	FTC as a file bates-	2-3, ¶ 10 & p. 406-515	
15	stamped CAN-	(Att. 9).	
16	CARDIFF0000047		
17	.		
18	474. Cannella purchased	Sands 3rd Dec. (PX-51),	
19	media time for a	p. 12, ¶ 41 & p. 1685-	
20	total of 8,039	1686 (Att. 125).	
21	airings of Eupepsia		
22	Thin advertising.	See SUF 468-473.	
23	475. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
24	Eunjung Cardiff	p. 11, ¶ 168 (Sanger Dec.	
25	admit that	(PX-52), p. 1, ¶ 6 & p. 34	
26	Corporate	(Att. 3)).	
27	Defendants		
28	purchased media	E. Cardiff 3rd RFA	

1	time for Eupepsia	Resp., p. 10, ¶ 162	
2	Thin television	(Sanger Dec. (PX-52), p.	
3	advertisements	2, ¶ 10 & p. 85 (Att. 7)).	
4	from Mercury		
5	Media, Inc.		
6	476. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
7	Eunjung Cardiff	p. 11, ¶ 169 (Sanger Dec.	
8	admit that Mercury	(PX-52), p. 1, ¶ 6 & p. 34	
9	Media, Inc.,	(Att. 3)).	
10	arranged for		
11	Eupepsia Thin	E. Cardiff 3rd RFA	
12	television	Resp., p. 10, ¶ 163	
13	advertisements to	(Sanger Dec. (PX-52), p.	
14	be broadcast on	2, ¶ 10 & p. 85 (Att. 7)).	
15	national cable		
16	television.		
17	477. Mercury Media	Cabrinha Dec. (PX-41),	
18	placed television	p. 1-2, ¶¶ 3, 5 & p. 14-24	
19	advertising for	(Att. 2).	
20	Eupepsia Thin on		
21	national media		
22	between August		
23	and November		
24	2017.		
25	478. Defendants	Sands 3rd Dec. (PX-51),	
26	advertised	p. 3, ¶ 9 & p. 93-106	
27	Eupepsia Thin on	(Att. 32).	
28	Facebook.		

FTC Response to SUF 459 – 478: The Cardiffs do not dispute that prior to February 2018, Eupepsia Thin was advertised on tv, the internet, and social media, including thousands of national airings of tv commercials. Whether or not this television advertising ceased in December 2017 or in February 2018 is not relevant to the defendants’ liability. Although defendants ceased advertising Eupepsia Thin through Mercury on December 25, 2017, they continued this television advertising through another media company, Cannella, through at least January 27, 2018. See PX 41, att. 9, p. 102. Also, defendants’ Redwood America website, which made deceptive claims for Eupepsia Thin, was in fact live as of March 28, 2018, when the Commission’s investigator visited it (Dkt. 7, p. 6, ¶ 17), and their controltheweight.com website was still live as of August 9, 2018. Dkt. 434-1, p. 6, ¶ 18. See also SUF 938.

Defendants now deny their sworn FRCP admissions made in response to the FTC’s Requests for Admission (FTC SUF 461-463, 475-475). Their contradictory declarations without detail or explanation for the change in their sworn testimony should be rejected. They do not raise a genuine issue of disputed fact.

The timeframe alleged is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1), and these facts are relevant to proving that the Cardiffs’ advertising claims were made and widely disseminated and to their individual liability for injunctive and monetary relief.

479. Defendants advised Eupepsia Thin on the websites www.bethinrx.com	Walker Dec. (PX-32), p. 9, ¶ 37 & p. 547-581 (Atts. 49-55); p. 591-592 (Att. 58).	Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims that were
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1 2 3 4 5 6 7 8 9	, www.thinliferx.com, www.thinyounow.com, www.redwoodamerica.com, and www.controltheweight.com.	Adkinson-Connor Dec. (PX-38), p. 13, ¶ 60. See Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶¶ 14, 17 & Dkt. 10, p. 49-62, 67-68 (Att. 026, 029) (thinrx.com and RedwoodAmerica.com). Sands 3rd Dec. (PX-51), p. 5, ¶ 18 & p. 187-216 (Att. 76).	made on their websites in or about February, 2018. Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and 46-53.
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FTC Response to SUF 479: The Cardiffs' do not dispute that Eupepsia Thin was advertised on the listed websites. Whether or not such advertising ceased in February 2018 is not relevant to defendants' liability. However, the Cardiffs did not cease advertising in February 2018. See SUF 938. Defendants' Redwood America website also made deceptive advertising claims for Eupepsia Thin and was live as of March 28, 2018, when the Commission's investigator visited it (Dkt. 7, p. 6, ¶ 17). Defendants' controltheweight.com website was still live as of August 9, 2018. Dkt. 434-1, p. 6, ¶ 18. See SUF 938 & 940.

The timeframe alleged is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1), and this fact is relevant to proving that the Cardiffs' advertising claims were made and widely disseminated as well as defendants' individual liability for injunctive and monetary relief.

27 28	480. Defendants advertised	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶¶ 15, 16	Object as to relevance. The consumers had
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1	Eupepsia Thin on	& Dkt. 10, p. 63-66 (Att.	already purchased the
2	product packaging.	027, 028).	product prior to seeing
3			the packaging. There is
4			no net-impression
5			garnered by any
6			“advertising” on the
7			products packaging.
8	FTC Response to SUF 480: Defendants do not dispute that they advertised		
9	Eupepsia Thin on product packaging. They only make the legal argument that		
10	product packaging is not “advertising” and therefore the FTC’s undisputed fact is		
11	not relevant. Although this is not the place to make legal arguments, this fact is		
12	relevant. Even if consumers have already purchased the product, packaging		
13	statements can influence their decisions regarding using the product and		
14	purchasing additional product. In addition, because Defendants’ put images of		
15	the Eupepsia Thin packages on their websites, e.g., Dkt. 10, p. 53 (Att. 026), Dkt.		
16	434-1, p. 191 (Att. 76), potential customers would see the label statements prior		
17	to purchase. Advertising on the package is relevant to the Defendants’ individual		
18	liability for injunctive and monetary relief.		
19	481. Jason and Eunjung	J. Cardiff 3rd RFA Resp.,	Admit.
20	Cardiff admit that	p. 13, ¶ 177 (Sanger Dec.	
21	the Eupepsia Thin	(PX-52), p. 1, ¶ 6 & p. 36	
22	box previously	(Att. 3)).	
23	submitted as PX-1,		
24	Attachment 28	E. Cardiff 3rd RFA	
25	(Dkt. 10, p. 63), is	Resp., p. 11, ¶ 171	
26	a true and accurate	(Sanger Dec. (PX-52), p.	
27	copy of a Eupepsia	2, ¶ 10 & p. 86 (Att. 7)).	
28	Thin package.		

B. Defendants’ Appetite Suppression and Weight Loss Claims for Eupepsia Thin

FTC Fact	FTC Citation	Cardiff Admit/Objection
<p>482. At least six of Defendants’ Eupepsia Thin TV ads said that Eupepsia Thin would enable users to “shed those unwanted pounds.”⁹</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 570, ln. 12-17; p. 577, ln. 21 – p. 578, ln. 1; p. 581, ln. 5-6; p. 586, ln. 7-12; p. 595, ln. 25 – p. 596, ln. 5; p. 603, ln. 16-17; p. 605, ln. 25 – p. 606, ln. 5; p. 609, ln. 5-6, ln. 19-20; p. 615, ln. 16-17; p. 617, ln. 15-20; p. 621, ln. 17-18; p. 625, ln. 17 – p. 626, ln. 3 (Att. 92).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 632, 638, ln. 14-19; p. 646, ln. 7-12; p. 649, ln. 24-25; p. 655, ln. 7-12; p. 665, ln.</p>	<p>Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and 46-53. The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The</p>

⁹ The Cardiffs submitted a single objection to SUF 482-490; the FTC’s response begins on p. 262.

1		17-22; p. 673, ln. 14-15;	last air date for TBX
2		p. 675, ln. 23 – p. 676, ln.	Free was on October
3		3; p. 679, ln. 8-9, ln. 22-	30, 2017. Dkt. 432-2
4		23; p.n 685, ln. 22-23; p.	at 3-8
5		687, ln. 21 – p. 688, ln. 1;	
6		p. 692, ln. 3-4; p. 696, ln.	
7		5-16 (Att. 93).	
8		Sands 3rd Dec. (PX-51),	
9		p. 9-11, ¶ 37 & p. 704,	
10		710, ln. 14-19; p. 718, ln.	
11		11-16; p. 721, ln. 25 – p.	
12		722, ln. 1; p. 727, ln. 8-	
13		13; p. 737, ln. 19-24; p.	
14		745, ln. 16-17; p. 747, ln.	
15		25 – p. 748, ln. 5; p. 751,	
16		ln. 10-11; p. 751, ln. 24-	
17		25; p. 757, ln. 23-24; p.	
18		759, ln. 22 – p. 760, ln. 2;	
19		p. 764, ln. 4-5; p. 768, ln.	
20		6-17 (Att. 94).	
21			
22		Sands 3rd Dec. (PX-51),	
23		p. 9-11, ¶ 37 & p. 775,	
24		781, ln. 12-17; p. 788, ln.	
25		22 – p. 789, ln. 2; p. 792,	
26		ln. 6-7; p. 797, ln. 9-14;	
27		p. 807, ln. 3-8; p. 814, ln.	
28		14-15; p. 816, ln. 24 – p.	

	<p>817, ln. 4; p. 820, ln. 4-5, 18-19; p. 826, ln. 12-13; p. 828, ln. 12-17; p. 832, ln. 14-15; p. 836, ln. 15-16 (Att. 95).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 843, 847, ln. 22 – p. 848, ln. 2 (Att. 96).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 852, p. 856, ln. 21 – p. 857, ln. 1 (Att. 97).</p>	
<p>483. At least six of Defendants’ Eupepsia Thin TV ads stated that “Eupepsia is a safe and effective way to help you control your appetite.”</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 569, ln. 12-13; p. 576, ln. 21-22; p. 585, ln. 7-8; p. 594, ln. 25 – p. 595, ln. 1; p. 604, ln. 25 – p. 605, ln. 1; p. 616, ln. 15-16; p. 624, ln. 17-18 (Att. 92).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 632, 634, ln. 14-15; p. 637, ln. 14-15; p. 645, ln. 7-8; p.</p>	

1	654, ln. 7-8; p. 664, ln.	
2	17-18; p. 674, ln. 23-24;	
3	p. 686, ln. 21-22; p. 695,	
4	ln. 5-6 (Att. 93).	
5		
6	Sands 3rd Dec. (PX-51),	
7	p. 9-11, ¶ 37 & p. 704,	
8	709, ln. 14-15; p. 717, ln.	
9	11-12; p. 726, ln. 8-9;	
10	p.736, ln. 19-20; p. 746,	
11	ln. 25 – p. 747, ln. 1; p.	
12	758, ln. 22-23; p. 767, ln.	
13	6-7 (Att. 94).	
14		
15	Sands 3rd Dec. (PX-51),	
16	p. 9-11, ¶ 37 & p. 775,	
17	780, ln. 12-13; p. 787, ln.	
18	22-23; p. 796, ln. 9-10; p.	
19	806, ln. 3-4; p. 815, ln.	
20	24-25; p. 827, ln. 12-13;	
21	p. 835, ln. 15-16 (Att.	
22	95).	
23		
24	Sands 3rd Dec. (PX-51),	
25	p. 9-11, ¶ 37 & p. 843,	
26	846, ln. 21-22 (Att. 96).	
27		
28	Sands 3rd Dec. (PX-51),	

	p. 9-11, ¶ 37 & p. 852, 855, ln. 21-22 (Att. 97).	
<p>484. At least seven of Defendants’ Eupepsia Thin TV ads stated that “The ingredients in Eupepsia will begin to activate in your system in less than 20 seconds. . . . In minutes, you will feel your appetite suppress, giving you control over how much you eat.”</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 569, ln. 16 – p. 570, ln. 1-3; p. 576, ln. 25 – p. 577, ln. 12; p. 585, ln. 11-23; p. 595, ln. 4-16; p. 605, ln. 4-16; p. 616, ln. 19 – p. 617, ln. 6; p. 624, ln. 21 – p. 625, ln. 8 (Att. 92).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 632, 637, ln. 14 – p. 638, ln. 5; p. 645, ln. 11-23; p. 654, ln. 11-23; p. 664, ln. 21 – p. 665, ln. 8; p. 675, ln. 2-14; p. 686, ln. 25 – p. 687, ln. 12; p. 695, ln. 9-21 (Att. 93).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 704, 709, ln. 18 – p. 710, ln. 5; p. 717, ln. 15 – p. 718, ln. 2; p. 726, ln. 12-24; p.</p>	

1	736, ln. 23 – p. 737, ln.	
2	10; p. 747, ln. 4-16; p.	
3	759, ln. 1-13; p. 767, ln.	
4	10-22 (Att. 94).	
5		
6	Sands 3rd Dec. (PX-51),	
7	p. 9-11, ¶ 37 & p. 775,	
8	780, ln. 16 – p. 781, ln. 3;	
9	p. 788, ln. 1-13; p. 796,	
10	ln. 13-25; p. 806, ln. 7-	
11	19; p. 816, ln. 3-15; p.	
12	827, ln. 16 – p. 828, ln. 3;	
13	p. 835, ln. 19 – p. 836, ln.	
14	6 (Att. 95).	
15		
16	Sands 3rd Dec. (PX-51),	
17	p. 9-11, ¶ 37 & p. 843,	
18	846, ln. 25 – p. 845, ln.	
19	13; p. 855, ln. 25 – p.	
20	856, ln. 12 (Att. 96).	
21		
22	Sands 3rd Dec. (PX-51),	
23	p. 12-13, ¶ 42 & p. 1206,	
24	1211, ln. 14 – p. 1212, ln.	
25	1; p. 1219, ln. 9-20; p.	
26	1228, ln. 10-21; p. 1238,	
27	ln. 19 – p. 1239, ln. 6; p.	
28	1248, ln. 25 – p. 1249, ln.	

	<p>12; p. 1260, ln. 24 – p. 1261, ln. 11; p. 1296, ln. 8-19 (Att. 108).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1447, 1452, ln. 17 – p. 1453, ln. 3; p. 1460, ln. 13-25; p. 1496, ln. 15 – p. 1470, ln. 2; p. 1479, ln. 24 – p. 1480, ln. 11; p. 1502, ln. 4-16; p. 1510, ln. 12-24 (Att. 112).</p>	
<p>485. At least four of Defendants’ Eupepsia Thin TV ads stated that “This one-of-a-kind product will help you lose weight -- without stepping one foot in the gym or giving up any of your favorite foods. . . . No counting calories or tracking food and no expensive gym memberships to pay.”</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 572, ln. 22 – p. 573, ln. 9 (Att. 92).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 632, 641, ln. 6-18 (Att. 93).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 704, 713, ln. 7-20 (Att. 94).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 775,</p>	

	783, ln. 22 – p. 784, ln. 9 (Att. 95).	
	See also SUF 492.	
<p>486. At least six of Defendants’ Eupepsia Thin TV ads stated that “Eupepsia is a fast-acting, thin film strip delivery solution offering you the ability to control your appetite and never struggle with overeating again.”</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 573, ln. 16-19 (Att. 92).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 632, 641, ln. 25 – p. 642, ln. 3 (Att. 93).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 704, 714, ln. 2-5 (Att. 94).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 775, 784, ln. 16-19 (Att. 95).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1206, 1215, ln. 24 – p. 1216, ln. 2 (Att. 108).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1447,</p>	

1		1457, ln. 2-5 (Att. 112).	
2	487. At least eight of	Sands 3rd Dec. (PX-51),	
3	Defendants' Eupepsia	p. 9-11, ¶ 37 & p. 564,	
4	Thin TV ads showed	577, ln. 7-8; p. 585, ln.	
5	a woman pushing	18-19; p. 595, ln. 11-12;	
6	away a plate of food.	p. 605, 11-12; p. 617, ln.	
7		1-2; p. 625, ln. 3-4 (Att.	
8		92).	
9			
10		Sands 3rd Dec. (PX-51),	
11		p. 9-11, ¶ 37 & p. 632,	
12		637, ln. 25 – p. 638, ln. 1;	
13		p. 645, ln. 18-19; p. 654,	
14		ln. 18-19; p. 665, ln. 3-4;	
15		p. 675, ln. 9-10; p. 687,	
16		ln. 7-8; p. 695, ln. 16-17	
17		(Att. 93).	
18			
19		Sands 3rd Dec. (PX-51),	
20		p. 9-11, ¶ 37 & p. 704,	
21		709, ln. 25 – p. 710, ln. 1;	
22		p. 717, ln. 22-23; p. 726,	
23		ln. 19-20; p. 737, ln. 9-	
24		10; p. 747, ln. 11-12; p.	
25		759, ln. 8-9 (Att. 94).	
26			
27		Sands 3rd Dec. (PX-51),	
28		p. 9-11, ¶ 37 & p. 775,	

1	780, ln. 23-24; p. 788, ln.	
2	8-9; p. 796, ln. 20-21; p.	
3	806, ln. 14-15; p. 816, ln.	
4	10-11; p. 827, ln. 23-24;	
5	p. 836, ln. 1-2 (Att. 95).	
6		
7	Sands 3rd Dec. (PX-51),	
8	p. 9-11, ¶ 37 & p. 843,	
9	847, ln. 7-8 (Att. 96).	
10		
11	Sands 3rd Dec. (PX-51),	
12	p. 9-11, ¶ 37 & p. 852,	
13	856, ln. 7-8 (Att. 97).	
14		
15	Sands 3rd Dec. (PX-51),	
16	p. 12-13, ¶ 42 & p. 1206,	
17	1211, ln. 21-22; p. 1219,	
18	ln. 15-16; p. 1228, ln. 16-	
19	17; p. 1239, ln. 1-2; p.	
20	1249, ln. 7-8; p. 1261, ln.	
21	6-7; p. 1269, ln. 14-15	
22	(Att. 108).	
23		
24	Sands 3rd Dec. (PX-51),	
25	p. 12-13, ¶ 42 & p. 1447,	
26	1452, ln. 23-24; p. 1460,	
27	ln. 20-21; p. 1469, ln. 22-	
28	23; p. 1480, ln. 6-7; p.	

1		1490, ln. 12-13; p. 1502,	
2		ln. 11-12; p. 1510, ln. 19-	
3		20 (Att. 112).	
4	488. At least six of	Sands 3rd Dec. (PX-51),	
5	Defendants' Eupepsia	p. 9-11, ¶ 37 & p. 564,	
6	Thin TV ads asked	568, ln. 25 – p. 569, ln. 2;	
7	“Are you ready to	p. 576, ln. 9-11 p. 584,	
8	lose 10, 20, even 100	ln. 20-22; p. 594, ln. 13-	
9	pounds without	15; p. 604, ln. 13-15; p.	
10	following a strict and	616, ln. 3-5; p. 624, ln. 5-	
11	complicated diet	7 (Att. 92).	
12	plan?”		
13		Sands 3rd Dec. (PX-51),	
14		p. 9-11, ¶ 37 & p. 632,	
15		637, ln. 2-4; p. 644, ln.	
16		20-22; p. 653, ln. 20-22;	
17		p. 664, ln. 5-7; p. 674, ln.	
18		11-13; p. 686, ln. 9-11; p.	
19		694, ln. 18-20 (Att. 93).	
20			
21		Sands 3rd Dec. (PX-51),	
22		p. 9-11, ¶ 37 & p. 704,	
23		709, ln. 2-4; p. 716, ln.	
24		24 – p. 717, ln. 1; p. 725,	
25		ln. 21-23; p. 736, ln. 7-9;	
26		p. 746, ln. 13-15; p. 758,	
27		ln. 10-12; p. 766, ln. 19-	
28		21 (Att. 94).	

	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 843, 846, ln. 9-11; p. 855, ln. 9-11 (Att. 96).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1206, 1210, ln. 23-25; p. 1218, ln. 17-19; p. 1227, ln. 18-20; p. 1238, ln. 3-5; p. 1248, ln. 9-11; p. 1260, ln. 8-10; p. 1268, ln. 16-18 (Att. 108).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1447, 1451, ln. 25 – p. 1452, ln. 2; p. 1459, ln. 22-24; p. 1468, ln. 24 – p. 1469, ln. 1; p. 1479, ln. 8-10; p. 1489, ln. 14-16; p. 1501, ln.13-15; p. 1509, ln. 21-23 (Att. 112).</p>	
<p>489. At least seven of Defendants’ Eupepsia Thin TV ads showed an image of syrup</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 569, ln. 3; p. 576, ln. 12; p. 584, ln. 23; p. 594, ln.</p>	

1	being poured over	16; p. 604, ln. 16; p. 616,	
2	pancakes.	ln. 6; p. 624, ln. 8 (Att.	
3		92).	
4			
5		Sands 3rd Dec. (PX-51),	
6		p. 9-11, ¶ 37 & p. 632,	
7		637, ln. 5; p. 644, ln. 23;	
8		p. 653, ln. 23; p. 664, ln.	
9		8; p. 674, ln. 14; p. 686,	
10		ln. 12; p. 694, ln. 21 (Att.	
11		93).	
12			
13		Sands 3rd Dec. (PX-51);	
14		p. 9-11, ¶ 37 & p. 704,	
15		709, ln. 5; p. 713, ln. 9; p.	
16		717, ln. 2; p. 725, ln. 24;	
17		p. 736, ln. 10; p. 746, ln.	
18		16; p. 758, ln. 13; p. 766,	
19		ln. 22 (Att. 94).	
20			
21		Sands 3rd Dec. (PX-51),	
22		p. 9-11, ¶ 37 & p. 775,	
23		780, ln. 2; p. 787, ln. 12;	
24		p. 795, ln. 24; p. 805, ln.	
25		18; p. 815, ln. 14; p. 827,	
26		ln. 2; p. 835, ln. 5 (Att.	
27		95).	
28			

	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 843, 846, ln. 12; p. 855, ln. 12 (Att. 96).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1206, 1210, ln. 1; p. 1218, ln. 20; p. 1227, ln. 21; p. 1238, ln. 6; p. 1248, ln. 12; p. 1260, ln. 11; p. 1268, ln. 19 (Att. 108).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1447, 1452, ln. 3; p. 1456, ln. 8; p. 1459, ln. 25; p. 1469, ln. 2; p. 1479, ln. 11; p. 1489, ln. 17; p. 1501, ln. 16 (Att. 112).</p>	
<p>490. At least seven of Defendants’ Eupepsia Thin TV ads showed images of a red “X” being super-imposed over a woman lifting weights.</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 569, ln. 6-7; p. 572, ln. 24-25; p. 576, ln. 13-14; p. 584, ln. 24-25; p. 594, ln. 17-18; p. 604, ln. 17- 18; p. 616, ln. 7-8; p. 624, ln. 9-10 (Att. 92).</p>	

1		
2		Sands 3rd Dec. (PX-51),
3		p. 9-11, ¶ 37 & p. 632,
4		637, ln. 6-7; p. 641, ln. 8-
5		9; p. 644, ln. 24-25; p.
6		653, ln. 24-25; p. 664, ln.
7		9-10; p. 674, ln. 15-16; p.
8		686, ln. 13-14; p. 694, ln.
9		22-23 (Att. 93).
10		
11		Sands 3rd Dec. (PX-51),
12		p. 9-11, ¶ 37 & p. 704,
13		709, ln. 6-7; p. 713, ln.
14		10-11; p. 717, ln. 3-4; p.
15		725, ln. 25 – p. 726, ln. 1;
16		p. 736, ln. 11-12; p. 746,
17		ln. 17-18; p. 758, ln. 14-
18		15; p. 766, ln. 23-24 (Att.
19		94).
20		
21		Sands 3rd Dec. (PX-51),
22		p. 9-11, ¶ 37 & p. 775,
23		780, ln. 4-5; p. 783, ln.
24		24-25; p. 787, ln. 14-15;
25		p. 796, ln. 1-2; p. 805, ln.
26		20-21; p. 815, ln. 16-17;
27		p. 827, ln. 4-5; p. 835, ln.
28		7-8 (Att. 95).

	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 843, 846, ln. 13-14; p. 855, ln. 13-14 (Att. 96).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1206, 1211, ln. 2-3; p. 1215, ln. 6-7; p. 1218, ln. 21-22; p. 1227, ln. 22-23; p. 1238, ln. 7-8; p. 1248, ln. 13- 14; p. 1260, ln. 12-13; p. 1268, ln. 20-21 (Att. 108).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1447, 1452, ln. 4-5; p. 1456, ln. 9-10; p. 1460, ln. 1-2; p. 1469, ln. 3-4; p. 1479, ln. 12-13; p. 1489, ln. 18-19; p. 1501, ln. 17-18; p. 1509, ln. 25 – p. 1510, ln. 1 (Att. 112).</p>	
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FTC Response to SUF 482 – 490: The Cardiffs do not dispute that they made deceptive advertising claims for Euepsia Thin on nationwide television thousands of times prior to December 25, 2017. Whether or not this television

advertising ceased on December 25, 2017 is not relevant to the defendants' liability for deceptive advertising. Although defendants may have ceased Eupepsia Thin television advertising with Mercury Media on December 25, 2017, they continued this television advertising through another media company, Cannella, through at least January 27, 2018. See PX 41, att. 9, p. 102. This advertising falls within the relevant time period of 2017-2018, as alleged in the complaint. (Dkt. 1)

The remaining objections based on website advertising and TBX-FREE advertising are not in any way relevant to these undisputed statements of fact and should be disregarded.

491. At least eight of Defendants' Eupepsia Thin TV ads included a testimonial from a man named Dan Hogan, identified as Danny in the ad, who claimed that he lost 45 pounds using Eupepsia Thin. ¹⁰	See Hogan Dec. (PX-45), p. 1, ¶¶ 6-7 (confirming that he was in the Eupepsia Thin infomercial). Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 570, ln. 18 – 571, ln. 3; p. 578, ln. 2 – 12; p. 581, ln. 11-21; p. 582 ln. 4-7; p. 586, ln. 13-23; p. 606, ln. 6-16; p. 606, ln. 23 – p.	Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and 46-53. The last air date and
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¹⁰ The Cardiffs submitted a single objection to SUF 491-497; the FTC's response begins on p. 280.

1	607, ln. 1; p. 617, ln. 21 –	services provided by
2	p. 618, ln. 5-6; p. 618 ln.	Mercury Media to
3	18-21; p. 626, ln. 4-14; p.	Redwood for Euepsia
4	627, ln. 1-4 (Att. 92).	Thin was on
5		December 25, 2017.
6	Sands 3rd Dec. (PX-51),	Dkt. 432-1 at 25. The
7	p. 9-11, ¶ 37 & p. 632,	last air date for TBX
8	638, ln. 20-22; p. 639, ln.	Free was on October
9	7-8; p. 646, ln. 13 – p.	30, 2017. Dkt. 432-2
10	647, ln. 1; p. 650, ln. 5-	at 3-8
11	18; p. 651, ln. 1-4; p.	Testimonialists signed
12	655, ln. 13 – p. 656, ln. 1;	an agreement
13	p. 676, ln. 4-17; p. 676,	indicating that they
14	ln. 24 – p. 677, ln. 2; p.	were giving
15	688, ln. 2-15; p. 689, ln.	information about their
16	2-5; p. 696, ln. 17 – p.	personal experiences
17	697, ln. 4 (Att. 93).	with the product. If the
18		testominalists lied
19	Sands 3rd Dec. (PX-51),	about their experience
20	p. 9-11, ¶ 37 & p. 704; p.	then it was
21	710, ln. 20 – p. 711, ln. 8;	unbeknownst to
22	p. 718, ln. 17 – p. 719, ln.	Redwood and the
23	5; p. 722, ln. 6-19; p.	Cardiffs. Ex. A, Jason
24	723, ln. 2-5; p. 727, ln.	Cardiff Declaration
25	14 – p. 728, ln. 2; p. 748,	¶¶91-92.
26	ln. 6-19; p. 749, ln. 1-4,	
27	p. 760, ln. 3-16; p. 761,	
28	3-6; p. 768, ln. 18 – p.	

1	769, ln. 6; p. 769, ln. 18-	
2	21 (Att. 94).	
3		
4	Sands 3rd Dec. (PX-51),	
5	p. 9-11, ¶ 37 & p. 775; p.	
6	781, ln. 18 – p. 782, ln. 3;	
7	p. 789, ln. 4-13; p. 792,	
8	ln. 12-22; p. 793, ln. 5-8;	
9	p. 797, 15-25; p. 817, ln.	
10	5-15; p. 817, ln. 22-25; p.	
11	828, ln. 18 – p. 829, ln. 3;	
12	p. 829, ln. 15-18; p. 837,	
13	ln. 2-12; p. 837, ln. 24 –	
14	p. 838, ln. 2 (Att. 95).	
15		
16	Sands 3rd Dec. (PX-51),	
17	p. 9-11, ¶ 37 & p. 843,	
18	848, ln. 3-16 (Att. 96).	
19		
20	Sands 3rd Dec. (PX-51),	
21	p. 9-11, ¶ 37 & p. 852,	
22	857, ln. 2-15 (Att. 97).	
23		
24	Sands 3rd Dec. (PX-51),	
25	p. 12-13, ¶ 42 & p. 1206;	
26	p. 1212, ln. 16 – p. 1213,	
27	ln. 4; p. 1220, ln. 10-23;	
28	p. 1224, ln. 3-16; p.	

1		1224, ln. 24 – p. 1225, ln.	
2		2; p. 1229, ln. 11-24; p.	
3		1250, ln. 2-15; p. 1250,	
4		ln. 22-25; p. 1262, ln. 1-	
5		14; p. 1263, ln. 1-4; p.	
6		1270 – p. 1271, ln. 3; p.	
7		1271 (Att. 108).	
8			
9		Sands 3rd Dec. (PX-51),	
10		p. 12-13, ¶ 42 & p. 1447;	
11		p. 1453, ln. 18 – p. 1454,	
12		ln. 6; p. 1461, ln. 15 – p.	
13		1462, ln. 3; p. 1465, ln.	
14		9-22; p. 1466, ln. 5-8; p.	
15		1470, ln. 17 – p. 1471, ln.	
16		5; p. 1491, ln. 7-20; p.	
17		1492, ln. 2-5; p. 1503, ln.	
18		6-19; p. 1504, ln. 6-9; p.	
19		1511, ln. 20 – p. 1512, ln.	
20		8; p. 1512, ln. 20-23 (Att.	
21		112).	
22	492. At least six of	Sands 3rd Dec. (PX-51),	
23	Defendants’ Eupepsia	p. 9-11, ¶ 37 & p. 564, p.	
24	Thin TV ads included	610, ln. 7-24 (Att. 92).	
25	a testimonial from a		
26	man named Andy,	Sands 3rd Dec. (PX-51),	
27	who claimed that he	p. 9-11, ¶ 37 & p. 632, p.	
28	lost 30 to 40 pounds	680, ln. 10 – p. 681, ln. 2	

1	using Eupepsia Thin	(Att. 93).	
2	without “hav[ing] to		
3	change anything, like	Sands 3rd Dec. (PX-51),	
4	my diet, my	p. 9-11, ¶ 37 & p. 704, p.	
5	lifestyle.”	752, ln. 12 – p. 753, ln. 4	
6		(Att. 94).	
7			
8		Sands 3rd Dec. (PX-51),	
9		p. 9-11, ¶ 37 & p. 775, p.	
10		821, ln. 6-23 (Att. 95).	
11			
12		Sands 3rd Dec. (PX-51),	
13		p. 12-13, ¶ 42 & p. 1206,	
14		p. 1254, ln. 9 – p. 1255,	
15		ln. 1 (Att. 108).	
16			
17		Sands 3rd Dec. (PX-51),	
18		p. 12-13, ¶ 42 & p. 1447,	
19		p. 1495, ln. 15 – p. 1496,	
20		ln. 7 (Att. 112).	
21	493. At least eight of	See Spero Dec. (PX-47),	
22	Defendants’ Eupepsia	p. 1, ¶¶ 5-6 (confirming	
23	Thin TV ads included	that she was in the	
24	a testimonial from a	Eupepsia Thin	
25	woman named Karen	infomercial).	
26	Spero, identified by		
27	only her first name in	Sands 3rd Dec. (PX-51),	
28	the ad, who claimed	p. 9-11, ¶ 37 & p. 564,	

1	that she lost 90	574, ln. 15-22; p. 575, ln.	
2	pounds using	7-21; p. 597, ln. 1-13; p.	
3	Eupepsia Thin and	607, ln. 14 – p. 608, ln. 1;	
4	was now “half the	p. 612, ln. 9 – p. 613, ln.	
5	size I used to be.”	5; p. 619, ln. 9-21; p.	
6		627, ln. 17 – p. 628, ln. 4	
7		(Att. 92).	
8			
9		Sands 3rd Dec. (PX-51),	
10		p. 9-11, ¶ 37 & p. 632; p.	
11		642, ln. 25 – p. 643, ln. 3;	
12		p. 643, ln. 17 – p. 644, ln.	
13		7; p. 666, ln. 20 – p. 667,	
14		ln. 9; p. 677, ln. 15 – p.	
15		678, ln. 4; p. 682, ln. 15 –	
16		p. 683, ln. 13; p. 689, ln.	
17		18 – p. 690, ln. 7; p. 697,	
18		ln. 22 – p. 698, ln. 11	
19		(Att. 93).	
20			
21		Sands 3rd Dec. (PX-51),	
22		p. 9-11, ¶ 37 & p. 704,	
23		715, ln. 3-10; p. 715, ln.	
24		19 – p. 716, ln. 11; p.	
25		738, ln. 22 – p. 739, ln.	
26		11; p. 749, ln. 17 – p.	
27		750, ln. 6; p. 754, ln. 17 –	
28		p. 755, ln. 15; p. 761, ln.	

1		19 – p. 762, ln. 8; p. 770,	
2		ln. 9-23 (Att. 94).	
3			
4		Sands 3rd Dec. (PX-51),	
5		p. 9-11, ¶ 37 & p. 775,	
6		785, ln. 1-18; p. 786, ln.	
7		7-21; p. 808, ln. 4-16; p.	
8		818, ln. 13-25; p. 823, ln.	
9		8 – p. 824, ln. 4; p. 830,	
10		ln. 6-18; p. 838, ln. 15 –	
11		p. 839, ln. 2 (Att. 95).	
12			
13		Sands 3rd Dec. (PX-51),	
14		p. 9-11, ¶ 37 & p. 843; p.	
15		848, ln. 17 – p. 849, ln. 8	
16		(Att. 96).	
17			
18		Sands 3rd Dec. (PX-51),	
19		p. 9-11, ¶ 37 & p. 852; p.	
20		857, ln. 16 – p. 858, ln. 7	
21		(Att. 97).	
22			
23		Sands 3rd Dec. (PX-51),	
24		p. 12-13, ¶ 42 & p. 1206;	
25		p. 1216, ln. 24 – p. 1217,	
26		ln. 6; p. 1217, ln. 14 – p.	
27		1218, ln. 4; p. 1240, ln.	
28		17 – p. 1241, ln. 5; p.	

1		1251, ln. 13 – p. 1252, ln.	
2		1; p. 1256, ln. 14 – p.	
3		1257, ln. 11; p. 1263, ln.	
4		17 – p. 1264, ln. 5; p.	
5		1271, ln. 21 – p. 1272, ln.	
6		9 (Att. 108).	
7			
8		Sands 3rd Dec. (PX-51),	
9		p. 12-13, ¶ 42 & p. 1447,	
10		1458, ln. 4-11; p. 1458,	
11		ln. 18 – p. 1459, ln. 9; p.	
12		1481, ln. 22 – p. 1482, ln.	
13		10; p. 1492, ln. 18 – p.	
14		1493, ln. 6; p. 1497, ln.	
15		20 – p. 1498, ln. 17; p.	
16		1504, ln. 22 – p. 1505, ln.	
17		10; p. 1513, ln. 11-24	
18		(Att. 112).	
19	494. At least six of	See Preston Dec. (PX-	
20	Defendants’ Eupepsia	46), p. 1, ¶ 6 (confirming	
21	Thin TV ads included	that he was in the	
22	a testimonial from a	Eupepsia Thin	
23	man named Todd	infomercial).	
24	Preston, identified		
25	only by his first name	Sands 3rd Dec. (PX-51),	
26	in the ad, who	p. 9-11, ¶ 37 & p. 564; p.	
27	claimed that he lost	571, ln. 17 – p. 572, ln. 3;	
28	132 pounds using	p. 579, ln. 1-12; p. 587,	

1	Eupepsia Thin.	ln. 12-24; p. 601, ln. 1-3;	
2		p. 623, ln. 4-16 (Att. 92).	
3			
4		Sands 3rd Dec. (PX-51),	
5		p. 9-11, ¶ 37 & p. 632; p.	
6		639, ln. 25 – p. 640, ln.	
7		13; p. 647, ln. 18 – p.	
8		648, ln. 7; p. 656, ln. 18 –	
9		p. 657, ln. 7; p. 670, ln.	
10		22-24; p. 693, ln. 15 – p.	
11		694, ln. 4 (Att. 93).	
12			
13		Sands 3rd Dec. (PX-51),	
14		p. 9-11, ¶ 37 & p. 704; p.	
15		711, ln. 25 – p. 712, ln.	
16		14; p. 719, ln. 19 – p.	
17		720, ln. 8; p. 728, ln. 19 –	
18		p. 729, ln. 8; p. 742, ln.	
19		24 – p. 743, ln. 1; p. 765,	
20		ln. 16 – p. 766, ln. 5 (Att.	
21		94).	
22			
23		Sands 3rd Dec. (PX-51),	
24		p. 9-11, ¶ 37 & p. 775; p.	
25		782, ln. 17 – p. 783, ln. 4;	
26		p. 790, ln. 2-14; p. 798,	
27		ln. 14 – p. 799, ln. 1; p.	
28		811, ln. 24 – p. 812, ln. 1;	

	<p>p. 834, ln. 1-13 (Att. 95).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1206; p. 1213, ln. 21 – p. 1214, ln. 9; p. 1221, ln. 15 – p. 1222, ln. 3; p. 1230, ln. 16 – p. 1231, ln. 5; p. 1244, ln. 20-22; p. 1267, ln. 14 – p. 1268, ln. 2 (Att. 108).</p> <p>Sands 3rd Dec. (PX-51) p. 12-13, ¶ 42 & p. 1447; p. 1454, ln. 23 – p. 1455, ln. 11; p. 1462, ln. 20 – p. 1463, ln. 9; p. 1471, ln. 22 – p. 1472, ln. 10; p. 1485, ln. 25 – p. 1486, ln. 2; p. 1508, ln. 19 – p. 1509, ln. 7 (Att. 112).</p>	
<p>495. At least eight of Defendants’ Eupepsia Thin TV ads included “before” and “after” pictures of Dan, Karen, and Todd.</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 570, ln. 18, 571, ln. 17; p. 574, ln. 1, ln. 19; p. 575, ln. 7, 18-19; p. 576, ln. 4; p. 578, ln. 2, 13; p. 579, ln. 1; p. 581, ln. 11; p.</p>	

1	582, ln. 4-5; p. 584, ln.	
2	15; p. 586, ln. 13, 24; p.	
3	587, ln. 12; p. 589, ln. 12;	
4	p. 590, ln. 13; p. 591, ln.	
5	24; p. 592, ln. 7; p. 594,	
6	ln. 8; p. 596, ln. 6; p. 597,	
7	ln. 1; p. 601, ln. 1; p. 604,	
8	ln. 8; p. 606, ln. 6, 23; p.	
9	607, ln. 14; p. 609, ln. 24;	
10	p. 610, ln. 13, 25; p. 611,	
11	ln. 19; p. 612, ln. 9; p.	
12	615, ln. 23; p. 618, ln. 18;	
13	p. 619, ln. 9; p. 623, ln.	
14	25; p. 626, ln. 4; p. 627,	
15	ln. 1; p. 628, ln. 22; p.	
16	629, ln. 4 (Att. 92).	
17		
18	Sands 3rd Dec. (PX-51),	
19	p. 9-11, ¶ 37 & p. 632,	
20	636, ln. 22; p. 638, ln. 20;	
21	p. 639, ln. 9, 25; p. 642,	
22	ln. 10; p. 643, ln. 4, 17; p.	
23	644, ln. 15; p. 646, ln. 13;	
24	p. 647, ln. 2, 18; p. 650,	
25	ln. 5; p. 651, ln. 1; p. 653,	
26	ln. 15; p. 655, ln. 13; p.	
27	656, ln. 2, 18; p. 658, ln.	
28	20; p. 659, ln. 23, 661, ln.	

1		11, 19; p. 663, ln. 25; p.	
2		665, ln. 23; p. 666, ln. 20;	
3		p. 670, ln. 22; p. 674, ln.	
4		6; p. 676, ln. 24; p. 677,	
5		ln. 15; p. 680, ln. 16; p.	
6		681, ln. 3; p. 681, ln. 25;	
7		p. 682, ln. 15; p. 686, ln.	
8		4; p. 688, ln. 2; p. 689, ln.	
9		2; p. 693, ln. 15; p. 694,	
10		ln. 13; p. 696, ln. 17; p.	
11		697, ln. 7; p. 698, ln. 17	
12		(Att. 93).	
13			
14		Sands 3rd Dec. (PX-51),	
15		p. 9-11, ¶ 37 & p. 704,	
16		708, ln. 22; p. 710, ln. 20;	
17		p. 711, ln. 9, 25; p. 714,	
18		ln. 12; p. 715, ln. 7, 19; p.	
19		716, ln. 19; p. 718, ln. 17;	
20		p. 719, ln. 6, 19, p. 722,	
21		ln. 6; p. 723, ln. 2; p. 725,	
22		ln. 16; p. 727, ln. 14; p.	
23		728, ln. 3, 19; p. 730, ln.	
24		21; p. 731, ln. 25; p. 733,	
25		ln. 13; p. 736, ln. 2; p.	
26		737, ln. 25; p. 738, ln. 22;	
27		p. 742, ln. 24; p. 746, ln.	
28		8; p. 748, ln. 23; p. 749,	

1	ln. 1, 17; p. 752, ln. 4, 18;	
2	p. 753, ln. 5; p. 754, ln. 2;	
3	p. 758, ln. 5; p. 760, ln. 3;	
4	p. 761, ln. 3; p. 765, ln.	
5	16; p. 766, ln. 14; p. 768,	
6	ln. 18; p. 769, ln. 18; p.	
7	770, ln. 9; p. 771, ln. 18	
8	(Att. 94).	
9		
10	Sands 3rd Dec. (PX-51),	
11	p. 9-11, ¶ 37 & p. 775,	
12	779, ln. 19; p. 781, ln. 18;	
13	p. 782, ln. 4, 17; p. 785,	
14	ln. 19; p. 786, ln. 7; p.	
15	787, ln. 4; p. 789, ln. 14;	
16	p. 790, ln. 1; p. 792, ln.	
17	10; p. 793, ln. 5; p. 795,	
18	ln. 16; p. 797, ln. 15; p.	
19	798, ln. 1, 14; p. 800, ln.	
20	14; p. 801, ln. 15; p. 803,	
21	ln. 1; p. 805, ln. 10; p.	
22	807, ln. 9; p. 808, ln. 4; p.	
23	811, ln. 24; p. 815, ln. 6;	
24	p. 817, ln. 5, 22-23; p.	
25	818, ln. 13; p. 820, ln. 23;	
26	p. 821, ln. 12; p. 822, ln.	
27	18; p. 823, ln. 8. p. 826,	
28	ln. 19; p. 828, ln. 18; p.	

1	829, ln. 15; p. 830, ln. 6;	
2	p. 834, ln. 22; p. 837, ln.	
3	2, 24; p. 838, ln. 15; p.	
4	839, ln. 8, 20; p. 840, ln.	
5	2 (Att. 95).	
6		
7	Sands 3 rd Dec. (PX-51),	
8	p. 9-11, ¶ 37 & p. 843,	
9	846, ln. 4; p. 848, ln. 17;	
10	p. 849, ln. 12 (Att. 96).	
11		
12	Sands 3 rd Dec. (PX-51),	
13	p. 9-11, ¶ 37 & p. 852; p.	
14	855, ln. 4; p. 857, ln. 2,	
15	16; p. 858, ln. 10 (Att.	
16	97).	
17		
18	Sands 3 rd Dec. (PX-51),	
19	p. 12-13, ¶ 42 & p. 1206,	
20	1210, ln. 18; p. 1212, ln.	
21	16; p. 1213, ln. 5, 21; p.	
22	1216, ln. 9; p. 1217, ln. 3,	
23	14; p. 1218, ln. 12; p.	
24	1220, ln. 10, 25; p. 1221,	
25	ln. 15; p. 1224, ln. 3, 24-	
26	25; p. 1227, ln. 13; p.	
27	1229, ln. 11, 25; p. 1230,	
28	ln. 16; p. 1232, ln. 20; p.	

1	1233, ln. 23; p. 1235, ln.	
2	10; p. 1237, ln. 23; p.	
3	1239, ln. 21; p. 1240, ln.	
4	17; p. 1244, ln. 20; p.	
5	1248, ln. 4; p. 1250, ln. 2,	
6	22; p. 1251, ln. 13; p.	
7	1254, ln. 1, 15; p. 1255,	
8	ln. 2, 24; p. 1256, ln. 14;	
9	p. 1260, ln. 3; p. 1262, ln.	
10	1; p. 1263, ln. 1; p. 1267,	
11	ln. 14; p. 1268, ln. 11; p.	
12	1270, ln. 15; p. 1271, ln.	
13	6; p. 1272, ln. 15 (Att.	
14	108).	
15		
16	Sands 3rd Dec. (PX-51),	
17	p. 12-13, ¶ 42 & p. 1447,	
18	1451, ln. 20; p. 1453, ln.	
19	18; p. 1454, ln. 7, 23; p.	
20	1457, ln. 12; p. 1458, ln.	
21	8, 18; p. 1459, ln. 17; p.	
22	1461, ln. 15; p. 1462, ln.	
23	4, 20; p. 1465, ln. 9; p.	
24	1466, ln. 5; p. 1468, ln.	
25	19; p. 1470, ln. 17; p.	
26	1471, ln. 6, 22; p. 1473,	
27	ln. 25; p. 1475, ln. 3; p.	
28	1476, ln. 15, 23; p. 1478,	

	<p>ln. 3; p. 1481, ln. 1; p. 1485, ln. 25; p. 1488, ln. 9; p. 1490, ln. 7; p. 1492, ln. 2, 18; p. 1495, ln. 7, 21; p. 1496, ln. 8; p. 1497, ln. 5; p. 1500, ln. 8; p. 1503, ln. 6; p. 1504, ln. 6; p. 1508, ln. 19; p. 1509, ln. 16; p. 1511, ln. 20; p. 1512, ln. 20; p. 1513, ln. 11; p. 1514, ln. 7, 20; p. 1515, ln. 2 (Att. 112).</p>	
<p>496. At least six of Defendants’ Eupepsia Thin TV ads said that with Eupepsia Thin, there was “no counting calories or tracking food and no expensive gym memberships to pay.”</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 573, ln. 8-9 (Att. 92).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 632, 641, ln. 17-18 (Att. 93).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 704, 713, ln. 19-20 (Att. 94).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 775, 784, ln. 8-9 (Att. 95).</p>	

	<p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1206, 1215, ln. 15-16 (Att. 108).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1447, 1456, ln. 15-16 (Att. 112).</p>	
<p>497. Eupepsia Thin testimonialist Karen said in the infomercial that she had “tried every diet you can think of as I got older, the fad diets, ordering food, don’t eat carbs, eat this only, you know, just tried it all.”</p>	<p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 564, 612, ln. 18-20 (Att. 92).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 632, 683, ln. 1-3 (Att. 93).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 704, 755, ln. 3-5 (Att. 94).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 775, 823, ln. 17-19 (Att. 95).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1206,</p>	

	<p>1256, ln. 24 – p. 1257, ln. 1 (Att. 108).</p> <p>Sands 3rd Dec. (PX-51), p. 12-13, ¶ 42 & p. 1447, 1498, ln. 5-7 (Att. 112).</p>	
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FTC Response to SUF 491 - 497: Defendants do not dispute that they used false testimonials and deceptive advertising claims in Eupepsia Thin television commercials distributed nationwide prior to December 25, 2017. Whether or not this television advertising ceased in December 2017 is not relevant to the defendants’ liability for deceptive advertising. Although defendants may have ceased advertising Eupepsia Thin through Mercury on or about December 25, 2017, they continued this television advertising through another media company, Cannella, through at least January 27, 2018. See PX 41, att. 9, p. 102. This advertising falls within the relevant time period of 2017-2018, as alleged in the complaint. (Dkt. 1).

The remaining objections based on website advertising and TBX-FREE advertising are not in any way relevant to these undisputed statements of fact and should be disregarded. While he denies it, Jason Cardiff knew that the testimonialists had not used Eupepsia Thin to lose the weight they discussed in the infomercial. See Dkt. 434-1, p. 39-40 (Att. 3) (Ty Sherrell emails Jason Cardiff on February 1, 2018 that “[I] am working on gttng testimonials from people who have already lost weight and I’m getting before pictures for them . . . they will still have the product and do the testiomonials but ill [sic] have before picutures from their past fat lives lol [.] this is what you pay me for uncle Jason, to use my [expletive deleted] brain.” Jason Cardiff replies “Love it big time[.] Ty you are great.”). Jason Cardiff thus knew that the releases signed by the

testimonialists were not true or based off their own experience with Eupepsia Thin.

498. Defendants’ bethinrx website included “before” and “after” pictures of people who purportedly lost 90 pounds and 27 pounds, respectively, using Eupepsia Thin, as well as other “before” and “after” pictures purportedly showing substantial weight loss caused by the product.

Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 49, 51 (Att. 026).

Object as to lack of timeframe and relevance. After the CID order on January 25, 2018, this marketing was not used on any advertising platform. Ex. A Jason Cardiff Dec ¶¶7, 9, and 46-53. The FTC’s own evidence does not have any advertising that postdate this. The

499. Defendants’ bethinrx website said that Eupepsia Thin “makes you feel full and cause weight lose [sic] without additional exercise or a special meal plan.”

Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 52 (Att. 026).

Cardiff’s attempted to comply with the FTC regarding any potential violations of the FTC Act.

FTC Response to SUF 498 – 499: Defendants do not dispute that their bethinrx website made deceptive advertising claims for Eupepsia Thin prior to January 25, 2018. Whether or not the advertising stopped in January 2018, as defendants claim, is not relevant to defendants’ liability for deceptive advertising. However,

that advertising continued through February 5, 2018 and August 9, 2018. The Commission’s investigator visited the live website bethinrx.com on February 5, 2018 – after the Cardiffs claim to have removed these statements and captured images from the website. Dkt. 7, p. 6, ¶ 14. Additionally, the FTC investigator visited the website controltheweight.com on August 9, 2018, capturing additional images of people who purportedly lost 90 pounds and 27 pounds using Eupepsia Thin, as well as the statement “No diets. No Lifestyle changes. No giving up your favorite food.” Dkt. 434-1, p. 6, ¶ 18 & Dkt. 434-1, p. 188-189 (Att. 076). See SUF 940.

The Cardiffs’ other objections are no relevant and create no disputed issues of material fact.

500. Defendants’ bethinrx website said “Eupepsia Thin SCIENTIFIC [sic] PROVEN”	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 50 (Att. 026).	Object as to lack of timeframe and relevance. After the CID order on January 25, 2018, this
501. Defendants’ bethinrx website said “Studies show the new product, Eupepsia Thin, gives people a chance to live a more active lifestyle and keep weight off.”	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 53 (Att. 026).	marketing was not used on any advertising platform. Ex. A Jason Cardiff Dec ¶¶7, 9, and 46-53. The FTC’s own evidence does not have any advertising that postdate this. The Cardiff’s attempted to comply with the FTC

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		<p>regarding any potential violations of the FTC Act.</p> <p>Guaraná, the active ingredient in Eupepsia Thin, showed anti-adipogenic potential due to its ability to modulate miRNAs and genes related to this process (Lima et al., 2017) or an increase in energetic metabolism and stimulation of mitochondrial biogenesis, contributing to control of weight gain, even when associated with high-fat diet (Lima et al., 2018).</p> <p>Preparations containing guarana in association with other herbal drugs, are widely used for weight loss in humans. Ex. A, Declaration of Jason</p>
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		Cardiff ¶20.
<p>FTC Response to SUF 500 – 501: The Cardiffs do not dispute that until January 25, 2018, the bethinrx.com website promised that Eupepsia Thin was “scientific[] proven” and that studies showed it helped people keep weight off. Whether or not this advertising ceased in January 2018 is not relevant to defendants’ liability for deceptive advertising. However, that advertising continued through February 5, 2018 and August 9, 2018. The Commission’s investigator visited the live website bethinrx.com on February 5, 2018 – after the Cardiffs claim to have removed these statements and captured images from the website. Dkt. 7, p. 6, ¶ 14. While the Cardiffs claim to have removed these statements and images from the website, the claims about scientific proof and supportive studies still appeared on the website. Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 50 (Att. 026). Additionally, the FTC investigator visited the website controltheweight.com on August 9, 2018, capturing additional images of people who purportedly lost 90 pounds and 27 pounds using Eupepsia Thin, as well as the statement “No diets. No Lifestyle changes. No giving up your favorite food.” Dkt. 434-1, p. 6, ¶ 18 & Dkt. 434-1, p. 188-189 (Att. 076). See SUF 940.</p> <p>The timeframe is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1) and the Cardiffs’ widely disseminated false advertising claims are relevant to their individual liability for injunctive and monetary relief.</p>		
<p>502. Defendants’ bethinrx website said that people “have been going crazy over this one product that is helping people shed</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 49 (Att. 026).</p>	<p>Object as to lack of timeframe and relevance. After the CID order on January 25, 2018, this marketing was not</p>

1	pounds and keeping it		used on any
2	off with no lifestyle		advertising platform.
3	changes.” ¹¹		Ex. A Jason Cardiff
4	503. Defendants’ bethinrx	Sands 1st Dec. (TRO PX-	Dec at ¶¶7, 9, and 46-
5	website said “Reach	1), Dkt. 7, p. 6, ¶ 14 &	53. The FTC’s own
6	Your Weight-Loss	Dkt. 10, p. 53 (Att. 026).	evidence does not
7	Goals!		have any advertising
8	Safe & Effective		that postdate this. The
9	Weight-Loss”		Cardiff’s attempted to
10	504. Defendants’ bethinrx	Sands 1st Dec. (TRO PX-	comply with the FTC
11	website said that	1), Dkt. 7, p. 6, ¶ 14 &	regarding any potential
12	“Current calorie	Dkt. 10, p. 53 (Att. 026).	violations of the FTC
13	reduction and meal		Act.
14	plans have less than		
15	5% success rate while		
16	the new product,		
17	Eupepsia Thin has a		
18	substantially higher		
19	success rate.”		
20	505. Defendants’ websites	Sands 1st Dec. (TRO PX-	
21	included an image of	1), Dkt. 7, p. 6, ¶¶ 14, 17	
22	the Eupepsia Thin	& Dkt. 10, p. 53 (Att.	
23	package with the	026) and p. 67 (Att. 029).	
24	statement “Clinically		

¹¹ The Cardiffs submitted a single objection to SUF 502-509; the FTC’s response begins on p. 288.

1	proven to help		
2	suppress appetite		
3	between meals.”		
4	506. Defendants’ bethinrx	Sands 1st Dec. (TRO PX-	
5	website said:	1), Dkt. 7, p. 6, ¶ 14 &	
6	“If you would like to	Dkt. 10, p. 55 (Att. 026).	
7	lose 8-20lbs – our one		
8	month supply at		
9	[\$]69.95 will work		
10	for you.		
11	If you would like to		
12	lose 20-50lbs – our		
13	three month supply at		
14	[\$]169.95 will work		
15	for you.		
16	If you would like to		
17	lose 50-70lbs – our		
18	six month supply at		
19	[\$]239.95 will work		
20	for you.		
21	If you would like to		
22	lose 70-100lbs – our		
23	one year supply at		
24	[\$]456.95 will work		
25	for you.”		
26	507. Defendants’ bethinrx	Sands 1st Dec. (TRO PX-	
27	website said that	1), Dkt. 7, p. 6, ¶ 14 &	
28	Eupepsia Thin will	Dkt. 10, p. 49 (Att. 026).	

1	“stop the ups and		
2	downs [of] weight		
3	loss.”		
4	508. Defendants’ websites	Sands 1st Dec. (TRO PX-	
5	said “Lose up to 15	1), Dkt. 7, p. 6, ¶ 14 &	
6	pounds your first	Dkt. 10, p. 53 (Att. 026).	
7	month with Eupepsia		
8	Thin oral strips	Sands 1 st Dec. (TRO PX-	
9	without diets or	1), Dkt. 7, p. 6, ¶ 17 &	
10	changing your food or	Dkt. 10, p. 67 (Att. 029).	
11	lifestyle choices.”		
12	509. Defendants’ website	Sands 1 st Dec. (TRO PX-	
13	said “Forget counting	1), Dkt. 7, p. 6, ¶ 17 &	
14	every little calorie or	Dkt. 10, p. 68 (Att. 029).	
15	gram of fat. Simply		
16	take one of these fast		
17	acting, thin oral [fi]lm		
18	strips as directed and		
19	still enjoy your		
20	favorite food without		
21	worrying about		
22	overeating or gaining		
23	back those lost		
24	pounds.”		
25	FTC Response to SUF 502 – 509: The Cardiffs do not dispute that prior to		
26	January 25, 2018, their websites deceptively claimed that Eupepsia Thin is		
27	superior to conventional weight-loss plans, causes significant and rapid weight		
28	loss with effortless maintenance, and users need not change their lifestyle or give		

up favorite foods. Whether or not this advertising ceased in January 2018 is not relevant to defendants' liability for deceptive advertising. However, that advertising continued through February 5, 2018 and August 9, 2018. The Commission's investigator visited the live website bethinrx.com on February 5, 2018 – after the Cardiffs claim to have removed these statements and captured images from the website. Dkt. 7, p. 6, ¶ 14. While the Cardiffs claim to have removed these statements and images from the website, the claims about scientific proof and supportive studies still appeared on the website. Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 50 (Att. 026). Additionally, the FTC investigator visited the website controltheweight.com on August 9, 2018, capturing additional images of people who purportedly lost 90 pounds and 27 pounds using Eupepsia Thin, as well as the statement “No diets. No Lifestyle changes. No giving up your favorite food.” Dkt. 434-1, p. 6, ¶ 18 & Dkt. 434-1, p. 188-189 (Att. 076). See SUF 940.

The timeframe is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1) and the Cardiffs' widely disseminated deceptive advertising claims are relevant to their individual liability for injunctive and monetary relief.

510. Defendants' controltheweight.com website said that Eupepsia Thin was “backed by several third party clinical studies, as well as, scientific research.”	Sands 3rd Dec. (PX-51), p. 5, ¶ 18 & p. 187, 193 (Att. 76).	Object as to lack of timeframe and relevance. After the CID order on January 25, 2018, this marketing was not used on any advertising platform. Ex. A Jason Cardiff Dec ¶¶7, 9, and 46-53.
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		<p>The FTC’s own evidence does not have any advertising that postdate this. The Cardiff’s attempted to comply with the FTC regarding any potential violations of the FTC Act.</p> <p>Guaraná, the active ingredient in Eupesia Thin, showed anti-adipogenic potential due to its ability to modulate miRNAs and genes related to this process (Lima et al., 2017) or an increase in energetic metabolism and stimulation of mitochondrial biogenesis, contributing to control of weight gain, even when associated with high-fat diet (Lima et al., 2018).</p> <p>Preparations</p>
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		containing guarana in association with other herbal drugs, are widely used for weight loss in humans. Ex. A, Declaration of Jason Cardiff ¶20.
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FTC Response to SUF 510: The defendants do not dispute that until January 25, 2018, the website controltheweight.com falsely claimed that Eupepsia Thin was “backed by several third party clinical studies, as well as, scientific research.” Whether or not this advertising ceased in January 2018 is not relevant to defendants’ liability for false advertising. However, defendants continued their website advertising through February 5, 2018 on the website bethinrx.com. The Commission’s investigator visited the live website bethinrx.com on February 5, 2018 – after the Cardiffs claim to have removed these statements and captured images from the website. Dkt. 7, p. 6, ¶ 14. While the Cardiffs claim to have removed these statements and images from the website, the claims about scientific proof and supportive studies still appeared on the website. Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 50 (Att. 026). Additionally, the FTC investigator visited the website controltheweight.com on August 9, 2018, capturing additional images of people who purportedly lost 90 pounds and 27 pounds using Eupepsia Thin, as well as the statement “No diets. No Lifestyle changes. No giving up your favorite food.” Dkt. 434-1, p. 6, ¶ 18 & Dkt. 434-1, p. 188-189 (Att. 076). See SUF 940. The defendants’ remaining arguments about attempted compliance and their characertizations of the scientific literature are irrelevant to the undisputed fact and are beyond their expertise. FRE 701.

The timeframe is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1)

and these widely disseminated false advertising claims are relevant to the Cardiffs' individual liability for injunctive and monetary relief.

511. Defendants' controltheweight.com website said "No diets, no giving up food. Works in 20 seconds."	Sands 3rd Dec. (PX-51), p. 5, ¶ 18 & p. 187 (Att. 76).	Object as to lack of timeframe and relevance. After the CID order on January 25, 2018, this marketing was not used on any advertising platform. Ex. A Jason Cardiff Dec ¶¶7, 9, and 46-53. The FTC's own evidence does not have any advertising that postdate this. The Cardiff's attempted to comply with the FTC regarding any potential violations of the FTC Act.
512. Defendants' controltheweight.com website said "No diets. No lifestyle changes. No giving up your favorite food."	Sands 3rd Dec. (PX-51), p. 5, ¶ 18 & p. 187, 188 (Att. 76).	

FTC Response to SUF 511 – 512: The Defendants do not dispute that until January 25, 2018, they made deceptive weight-loss claims on their website. Whether or not defendants ceased their advertising in January 2018 is not relevant to defendants' liability for deceptive advertising. However, the assertion that these advertising claims were not made after January 25, 2018 is not true. The FTC's investigator visited and captured that live website on August 9, 2018. Dkt. 434-1, p. 6, ¶ 18. That capture shows images of people who purportedly lost

90 pounds and 27 pounds using Eupepsia Thin, as well as the statement “No diets. No Lifestyle changes. No giving up your favorite food.” Dkt. 434-1, p. 6, ¶ 18 & Dkt. 434-1, p. 188-189 (Att. 076). See SUF 940.

The timeframe is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1) and these widely disseminated deceptive advertising claims are relevant to the Cardiffs’ individual liability for injunctive and monetary relief.

513. Defendants’ controltheweight.com website said: “‘I’m half the size I used to be’ -- Karen ‘I lost 45 pounds. I went from 230 lbs back to 185 lbs’ – Danny ‘This product really works!’ – Anthony R. ‘I’m able to eave whatever I want and still drink wine!’ – Tricia”	Sands 3rd Dec. (PX-51), p. 5, ¶ 18 & p. 187, 188 (Att. 76).	Object as to lack of timeframe and relevance. After the CID order on January 25, 2018, this marketing was not used on any advertising platform. Ex. A Jason Cardiff Dec ¶¶7, 9, and 46-53. The FTC’s own evidence does not have any advertising that postdate this. The Cardiff’s attempted to
514. Defendants’ controltheweight.com website included “before” and “after” pictures of Danny, the testimonialist who appeared in the	Sands 3rd Dec. (PX-51), p. 5, ¶ 18 & p. 187, 204 (Att. 76).	comply with the FTC regarding any potential violations of the FTC Act. Danny signed a form indicating that what was advertised

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Eupepsia Thin infomercial, along with text saying that Danny lost 45 lbs!” and “From 230 lbs to 185 lbs!”	actually happened. The Cardiffs ensured that the testimonials were real and from the person who said them. The Cardiffs had each testimonialist sign a form that indicated that what they were saying was true and based off their own personal experience with the product. Ex. A, Jason Cardiff Declaration ¶¶91-92. The form said: All of the statements made are true and accurate, all of my on-screen representation, of the product [product], are of my own true story. Id.
25 26 27 28	FTC Response to SUF 513–514: The Defendants do not dispute that until January 25, 2018, the website controltheweight.com made deceptive advertising claims with images of testimonialists claiming to have lost significant amounts of weight. Whether or not defendants ceased advertising in January 25, 2018 is not	

relevant to defendants’ liability for deceptive advertising. However, the assertion that these advertising claims were not made after January 25, 2018 is not true. The FTC’s investigator visited and captured that live website on August 9, 2018. Dkt. 434-1, p. 6, ¶ 18. That capture shows images of people who purportedly lost 90 pounds and 27 pounds using Eupepsia Thin, as well as the statement “No diets. No Lifestyle changes. No giving up your favorite food.” Dkt. 434-1, p. 6, ¶ 18 & Dkt. 434-1, p. 188-189 (Att. 076). See SUF 940.

While he denies it in his response here, Jason Cardiff knew that the testimonialists had not used Eupepsia Thin to lose the weight they discussed in the infomercial. See Dkt. 434-1, p. 39-40 (Att. 3) (Ty Sherrell emails Jason Cardiff on February 1, 2018 that “[I] am working on gttng testimonials from people who have already lost weight and I’m getting before pictures for them . . . they will still have the product and do the testiomonials but ill [sic] have before picutures from their past fat lives lol [.] this is what you pay me for uncle Jason, to use my [expletive deleted] brain.” Jason Cardiff replies “Love it big time[.] Ty you are great.”). Jason Cardiff thus knew that the releases signed by the testimonialists were not true or based off their own experience with Eupepsia Thin.

The relevant timeframe is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1) and these widely disseminated deceptive advertising claims are relevant to the Cardiffs’ individual liability for injunctive and monetary relief.

515. Defendants’ controlthweight. com website said that Eupepsia thin “is helping people shed pounds and	Sands 3rd Dec. (PX-51), p. 5, ¶ 18 & p. 187, 191 (Att. 76).	Object as to lack of timeframe and relevance. After the CID order on January 25, 2018, this marketing was not used on any advertising
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1	keeping it off with		platform. Ex. A Jason
2	no lifestyle		Cardiff Dec ¶¶7, 9, and
3	changes.”		46-53. The FTC’s own
4	516. Defendants’	Sands 3rd Dec. (PX-51),	evidence does not have
5	controltheweight.c	p. 5, ¶ 18 & p. 187, 191	any advertising that
6	om website said	(Att. 76).	postdate this. The
7	that the product		Cardiff’s attempted to
8	“Blocks the brain		comply with the FTC
9	from overeating,”		regarding any potential
10	“Gives users the		violations of the FTC
11	sensation of being		Act.
12	full,” is an		
13	“appetite		
14	suppressant” that		
15	enables users to		
16	“Keep off the		
17	weight long-term”		
18	while “eat[ing]		
19	your favorite		
20	food.”		
21	517. Defendants’	Sands 3rd Dec. (PX-51),	
22	controltheweight.c	p. 5, ¶ 18 & p. 187, 204	
23	om website said	(Att. 76).	
24	that the product		
25	“makes you feel		
26	full and cause		
27	weight loss without		
28	additional exercise		

1	or a special meal		
2	plan.”		
3	518. Defendants’	Sands 3rd Dec. (PX-51),	
4	controltheweight.c	p. 5, ¶ 18 & p. 187, 206	
5	om website said	(Att. 76).	
6	that Eupepsia Thin		
7	has a substantially		
8	higher success		
9	rate” than current		
10	calorie reduction		
11	and meal plans.		

FTC Response to SUF 515 – 518: Defendants do not dispute that until January 25, 2018, their website made deceptive weight-loss claims, including that Eupepsia thin “has a substantially higher success rate” than current calorie reduction and meal plans “is helping people shed pounds and keeping it off with no lifestyle changes,” “Blocks the brain from overeating,” “Gives users the sensation of being full,” is an “appetite suppressant” that enables users to “Keep off the weight long-term” while “eat[ing] your favorite food,” and “makes you feel full and cause weight loss without additional exercise or a special meal plan.” Whether or not this advertising ceased after January 2018 is not relevant to the defendants’ liability for deceptive advertising. However, the assertion that these advertising claims were not made after January 25, 2018 is not true. The FTC’s investigator visited and captured that live website on August 9, 2018. Dkt. 434-1, p. 6, ¶ 18. That capture shows images of people who purportedly lost 90 pounds and 27 pounds using Eupepsia Thin, as well as the statement “No diets. No Lifestyle changes. No giving up your favorite food.” Dkt. 434-1, p. 6, ¶ 18 & Dkt. 434-1, p. 188-189 (Att. 076). See SUF 940.

The timeframe is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1) and these widely disseminated deceptive advertising claims are relevant to the Cardiffs’ individual liability for injunctive and monetary relief.

519. The Eupepsia Thin box said “Appetite Suppressant” and “Easy Weight Loss.”	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 15 & Dkt. 10, p. 63 (Att. 027). Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 16 & Dkt. 10, p. 65 (Att. 028).	Objection, relevance. No net-impression can be made by the product box because the consumer had already received the box after ordering online or calling into Redwood.
520. The Eupepsia Thin box said “Still eat your favorite foods. No change in exercise required.”	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 15 & Dkt. 10, p. 63 (Att. 027). Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 16 & Dkt. 10, p. 65 (Att. 028).	
521. The Eupepsia Thin box said that the product was “clinically proven to help suppress appetite between meals.”	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 15 & Dkt. 10, p. 63 (Att. 027).	

FTC Reponse to SUF 519 – 521: Defendants do not dispute that Eupepsia Thin product packaging included deceptive advertising claims, including “Appetite Suppressant” and “Easy Weight Loss,” “Still eat your favorite foods. No change in exercise required,” and “clinically proven to help suppress appetite between

meals.” Defendants argue that product packaging is not advertising. The objection is argument, however, even if consumers have already purchased the product, packaging statements can influence their decisions regarding using the product and purchasing additional product. In addition, because Defendants put images of the TBX-FREE package on their www.tbxfree.com/2 website, Dkt. 7, p. 229, 235 (Att. 008), potential customers would see label statements prior to purchase. Consequently, advertising on the package is deceptive advertising and relevant to the Cardiffs’ individual liability for injunctive and monetary relief.

522. An advertising insert received with the FTC investigator’s purchase of TBX-FREE said that “Eupepsia Thin is the product with proven clinical research to help you keep the weight off for life. This is the cure to obesity – a way to lose weight and keep it off. The product works best if you are looking to lose more than 10 lbs. The new	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 14, ¶ 36 & Dkt. 10, p. 187 (Att. 072).	Guaraná, the active ingredient in Eupepsia Thin, showed anti-adipogenic potential due to its ability to modulate miRNAs and genes related to this process (Lima et al., 2017) or an increase in energetic metabolism and stimulation of mitochondrial biogenesis, contributing to control of weight gain, even when associated with high-fat diet (Lima et al., 2018). Preparations containing guarana in association with other herbal drugs, are widely used for
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	thin film strip will allow you to eat whatever you like without adding additional exercise regime or meal plans [sic].”	weight loss in humans. Ex. A, Declaration of Jason Cardiff ¶20. Objection as to lack of timeframe. Defendants made changes to its websites and marketing after receiving the CID from the FTC. The website was not even up and working at the time the lawsuit was filed by the FTC and Redwood stopped paid marketing on January 28, 2018. Ex. A, Declaration of Jason Cardiff ¶¶7, 9, and 46-53.
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FTC Response to SUF 522: Defendants do not dispute that the advertising insert they included with product shipments to customers said that “Eupepsia Thin is the product with proven clinical research to help you keep the weight off for life. This is the cure to obesity – a way to lose weight and keep it off. The product works best if you are looking to lose more than 10 lbs. The new thin film strip will allow you to eat whatever you like without adding additional exercise regime or meal plans [sic].” The remaining narrative concerning dates when paid advertising ceased and the analysis of a scientific study are not relevant to the undisputed fact and should be disregarded. Jason Cardiff’s assertion that there were clinical studies on the purported active ingredient in TBX-FREE must be disregarded and his characterization of the findings of any scientific study is

inadmissible under FRE 701 because he is providing testimony based on “scientific, technical, or other specialized knowledge within the scope of FRE 702,” but has not been qualified as an expert. Defendants are not qualified experts. FRE 701.

The relevant timeframe is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1). These deceptive advertising claims were widely disseminated (including through product inserts) and are relevant to the Cardiffs’ individual liability for injunctive and monetary relief.

523. Eupepsia Thin was advertised as an effective appetite suppressant.	SUF 483-484, 486-487, 505, 516 519, 521.	Admit. Guaraná, the active ingredient in Eupepsia Thin, showed anti-adipogenic potential due to its ability to modulate miRNAs and genes related to this process (Lima et al., 2017) or an increase in energetic metabolism and stimulation of mitochondrial biogenesis, contributing to control of weight gain, even when associated with high-fat diet (Lima et al., 2018). Preparations containing guarana in association with other herbal drugs,
524. Jason Cardiff and Eunjung Cardiff admit that Eupepsia Thin was advertised as an effective appetite suppressant.	J. Cardiff 3rd RFA Resp., p. 16, ¶ 190 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 39 (Att. 3)). E. Cardiff 3rd RFA Resp., p. 13, ¶ 184 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 88 (Att. 7)).	
525. Eupepsia Thin was advertised as an effective weight loss aid.	SUF 482, 485, 488, 491-495, 497-499, 502, 503, 506, 508, 513-515, 517-519, 522.	
526. Jason Cardiff and Eunjung Cardiff	J. Cardiff 3rd RFA Resp., p. 16, ¶ 191 (Sanger Dec.	

1 2 3 4 5 6 7 8	admit that Eupepsia Thin was advertised as an effective weight loss aid.	(PX-52), p. 1, ¶ 6 & p. 39 (Att. 3). E. Cardiff 3rd RFA Resp., p. 13, ¶ 185 (Sanger Dec. (PX- 52), p. 2, ¶ 10 & p. 88 (Att. 7).	are widely used for weight loss in humans. Ex. A, Declaration of Jason Cardiff ¶20.
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9 **FTC Response to SUF 522 – 526:** Defendants do not dispute that they have
10 previously admitted that Eupepsia Thin was advertised as an effective appetite
11 suppressant and that it was advertised as an effective weight loss aid. They also
12 do not dispute that Eupepsia Thin was in fact advertised as an effective appetite
13 suppressant. The remaining response is argument based on Jason Cardiff’s
14 characterization of the findings of a scientific study. This is inadmissible under
15 FRE 701 because he is providing testimony based on “scientific, technical, or
16 other specialized knowledge within the scope of FRE 702,” but has not been
17 qualified as an expert.

18 19 20 21 22 23 24 25	527. Eupepsia Thin was advertised as starting working in less than 20 seconds, and suppressing a user’s appetite within minutes.	SUF 484, 511.	Admit. The studies on film strips shows that the active ingredients enter the blood stream within 20 seconds of taking the film strip. Ex. 1 Cardiff Declaration ¶¶80a-d.
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26 **FTC Response to SUF 527:** Defendants admit and do not dispute that Eupepsia
27 Thin was advertised as starting working in less than 20 seconds, and suppressing
28 a user’s appetite within minutes. The rest is argument and irrelevant.

Jason Cardiff's characterization of the findings of any scientific study is inadmissible under FRE 701 because he is providing testimony based on "scientific, technical, or other specialized knowledge within the scope of FRE 702," but has not been qualified as an expert.

528. Eupepsia Thin was advertised as enabling users to lose 10, 20, or even 100 pounds without dieting, giving up their favorite foods, or increasing their exercise.	SUF 485, 488-490, 492, 496-497, 499, 508-509, 511-512, 515-517, 520, 522.	Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶7, 9, and
529. Eupepsia Thin was advertised as enabling users to lose 15 pounds their first month without dieting or changing their food or lifestyle.	SUF 508.	46-53. The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on
530. Eupepsia Thin was advertised as enabling users to lose as much as 20 pounds in one month and as much	SUF 506.	October 30, 2017. Dkt. 432-2 at 3-8

1	as 50 pounds in		
2	three months.		
3	531. Eupepsia Thin was	SUF 497, 504, 518.	
4	advertised as more		
5	effective at causing		
6	weight loss than		
7	conventional		
8	calorie reduction		
9	and meal plans.		

FTC Response to SUF 528 – 531: The Cardiffs do not dispute that Eupepsia Thin was advertised as enabling users to lose 10, 20, or even 100 pounds without dieting, enabling users to lose 15 pounds their first month without dieting or changing their food or lifestyle, enabling users to lose as much as 20 pounds in one month and as much as 50 pounds in three months, and more effective at causing weight loss than conventional calorie reduction and meal plans. Whether or not defendants stopped marketing Eupepsia Free in February 2018 is not relevant to their liability for deceptive advertising. However, defendants did not stop marketing Eupepsia Free in February 2018. Defendants’ Redwood America website, which made efficacy claims for Eupepsia Thin was live as of March 28, 2018, when Commission’s investigator visited it, (Dkt. 7, p. 6, ¶ 17) and their controltheweight.com website was still live as of August 9, 2018. Dkt. 434-1, p. 6, ¶ 18.

The controlyourweight.com website advertised weight loss of up to 15 pounds your first month; “No diets. No lifestyle changes. No giving up your favorite food.”; weight loss of up to 20 pounds in a month and 50 pounds in three months. Dkt. 434-1, pp. 197 - 201. See SUF 940.

The relevant timeframe is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1). These deceptive advertising claims were widely disseminated and are relevant to the Cardiffs' individual liability for injunctive and monetary relief.

532. Eupepsia Thin was advertised as enabling consumers to avoid gaining back weight they lose, without any lifestyle changes.	SUF 502, 509, 515-516, 522. See also SUF 507.	Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018. Dkt. 429-1 PX 38 at 101-
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533. Eupepsia Thin advertising represented that clinical studies have been conducted on the product.	SUF 500, 501, 505, 510, 521-522.	102; Ex. A, Jason Cardiff Declaration ¶¶7, 9, and 46-53. The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December
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534. Eupepsia Thin advertising represented that those clinical studies showed that Eupepsia Thin is an effective appetite suppressant and	SUF 500, 501, 505, 510, 521.	25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8 Guaraná, the active ingredient in Eupepsia Thin, showed anti-adipogenic potential due
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weight loss aid.		to its ability to modulate miRNAs and genes related to this process (Lima et al., 2017) or an increase in energetic metabolism and stimulation of mitochondrial biogenesis, contributing to control of weight gain, even when associated with high-fat diet (Lima et al., 2018). Preparations containing guarana in association with other herbal drugs, are widely used for weight loss in humans. Ex. A, Declaration of Jason Cardiff ¶20. ¹²
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FTC Response to SUF 532 – 534: The Cardiffs’ do not dispute that Eupepsia Thin was deceptively advertised as enabling consumers to avoid gaining back the weight they lost without any lifestyle changes, that clinical studies had been conducted on the product, and that those clinical studies showed that Eupepsia

¹² Defendants grouped objection to FTC SUF 532-538 together. To be consistent with the Commission’s original organization, this Reply separates FTC SUF 532-534 from 535-538.

Thin was an effective appetite suppressant and weight loss aid. Whether or not defendants ceased placing television advertisements in December 25, 2017 or ceased advertising altogether in February 2018 is not relevant to defendants' liability for deceptive advertising. In fact defendants continued their television advertising through another media company, Cannella, through January 27, 2018. See PX 41, Att. 9, p.102. Additionally, defendants did not stop advertising Eupepsia Thin in February 2018. Defendants' Redwood America website, which made efficacy claims for Eupepsia Thin was live as of March 28, 2018, when Commission's investigator visited it, (Dkt. 7, p. 6, ¶ 17) and their controltheweight.com website was still live as of August 9, 2018. Dkt. 434-1, p. 6, ¶ 18.

The controlyourweight.com website advertised weight loss of up to 15 pounds your first month; "No diets. No lifestyle changes. No giving up your favorite food."; weight loss of up to 20 pounds in a month and 50 pounds in three months. Dkt. 434-1, pp. 197 – 201. The relevant timeframe is when Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1). These deceptive advertising claims were widely disseminated and are relevant to the Cardiffs' individual liability for injunctive and monetary relief.

C. Defendants' Appetite Suppression and Weight Loss Claims for Eupepsia Thin Were False or Unsubstantiated

FTC Fact	FTC Citation	Cardiff Admit/Objection
535. Jason Cardiff and Eunjung Cardiff admit that Defendants did not	J. Cardiff 3rd RFA Resp., p. 17, ¶ 199 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 40 (Att. 3)).	Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	conduct any human clinical studies of Eupepsia Thin as an appetite suppressant.	<p>E. Cardiff 3rd RFA Resp., p. 14, ¶ 193 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 89 (Att. 7)).</p> <p>See also Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 145 (Att. 001) (“Redwood is informed and believes that it did not perform any unpublished human clinical studies for . . . Eupepsia Thin.”).</p> <p>Walker Dec. (PX-32), p. 11, ¶ 43 (to her knowledge, Redwood never conducted any scientific testing of Eupepsia Thin).</p>	<p>the claims that were made on their websites in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and 46-53. The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8</p> <p>Guaraná, the active ingredient in Eupepsia Thin, showed anti-adipogenic potential due to its ability to modulate miRNAs and genes</p>
23 24 25 26 27 28	536. Jason Cardiff and Eunjung Cardiff admit that Defendants did not conduct any human clinical studies of	<p>J. Cardiff 3rd RFA Resp., p. 18, ¶ 205 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 41 (Att. 3)).</p> <p>E. Cardiff 3rd RFA</p>	<p>related to this process (Lima et al., 2017) or an increase in energetic metabolism and stimulation of mitochondrial biogenesis,</p>

<p>Eupepsia Thin as a weight loss aid.</p>	<p>Resp., p. 15, ¶ 199 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 90 (Att. 7)).</p> <p>See also Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 145 (Att. 001) (“Redwood is informed and believes that it did not perform any unpublished human clinical studies for . . . Eupepsia Thin.”).</p> <p>Walker Dec. (PX-32), p. 11, ¶ 43 (to her knowledge, Redwood never conducted any scientific testing of Eupepsia Thin).</p>	<p>contributing to control of weight gain, even when associated with high-fat diet (Lima et al., 2018). Preparations containing guarana in association with other herbal drugs, are widely used for weight loss in humans. Ex. A, Declaration of Jason Cardiff ¶20.</p>
<p>537. Jason Cardiff and Eunjung Cardiff admit that at the time Eupepsia Thin was being advertised as an effective appetite suppressant,</p>	<p>J. Cardiff 3rd RFA Resp., p. 17, ¶ 200 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 40 (Att. 3)).</p> <p>E. Cardiff 3rd RFA Resp., p. 15,</p>	

1	Defendants did not	¶ 194 (Sanger Dec. (PX-	
2	possess any human	52), p. 2, ¶ 10 & p. 90	
3	clinical studies	(Att. 7)).	
4	conducted on		
5	Eupepsia Thin that		
6	showed Eupepsia		
7	Thin to be an		
8	effective appetite		
9	suppressant aid.		
10	538. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
11	Eunjung Cardiff	p. 18, ¶ 206 (Sanger Dec.	
12	admit that at the	(PX-52), p. 1, ¶ 6 & p. 41	
13	time Eupepsia Thin	(Att. 3)).	
14	was being		
15	advertised as an	E. Cardiff 3rd RFA	
16	effective weight	Resp., p. 15-16, ¶ 200	
17	loss aid,	(Sanger Dec. (PX-52), p.	
18	Defendants did not	2, ¶ 10 & p. 90-91 (Att.	
19	possess any human	7)).	
20	clinical studies		
21	conducted on		
22	Eupepsia Thin that		
23	showed Eupepsia		
24	Thin to be an		
25	effective weight		
26	loss aid.		
27	FTC Response to SUF 535 – 538: Defendants do not dispute that they		
28	previously admitted that they possessed no human clinical studies of Eupepsia		

Thin for appetite suppression or weight loss, and they do not dispute that they have previously admitted that they advertised Eupepsia Thin for both appetite suppression and as a weight-loss aid.

The Cardiffs have provided no explanation or evidence that their prior admissions were somehow erroneous, and their additional narrative does not bear on these facts and should be disregarded.

539. The FTC submitted the Declaration and accompanying expert report of David A. Levitsky, Ph.D. ¹³	Declaration of David A. Levitsky, Ph.D., (TRO PX-8), Dkt. 208 to 208-2.	Objection irrelevant and lacks timeframe. Defendants claims about the efficacy of Eupepsia Thin at the time that the FTC its lawsuit did not
540. The FTC identified Dr. Levitsky to Defendants in its September 26, 2019 Initial Disclosures.	Sanger Dec. (PX-52), p. 2-3, ¶ 15. See also Sanger Dec. (PX-52), p. 2, ¶¶ 13-14 (FTC sent counsel for the Cardiffs copies of its four expert reports in March and April 2019).	encompass the claims that are at the heart of the study Dr. Levitsky. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018. Accordingly, his opinions
541. Dr. Levitsky is a	Levitsky Expert Report	should be excluded under

¹³ The Cardiffs submitted a single objection to SUF 539-598; the FTC's response begins on p. 339. However, to be consistent with the Commission's original organization, this Response groups SUF 599 together with SUF 600, rather than with SUF 539-598.

1	tenured Professor	(TRO PX-8), Dkt. 208, p.	the Daubert test. <i>Daubert</i>
2	in the Division of	4, ¶ I.3.	<i>v. Merrell Dow Pharms.,</i>
3	Nutritional		<i>Inc.</i> , 509 U.S. 579, 589,
4	Sciences and the		(<i>;</i> <i>FTC v. Qualcomm</i>
5	Department of		<i>Inc.</i> , 2018 U.S. Dist.
6	Psychology at		LEXIS 208197, *9, 2018
7	Cornell University.		WL 6460573.
8	542. Dr. Levitsky has	Levitsky Expert Report	Objection irrelevant and
9	taught numerous	(TRO PX-8), Dkt. 208, p.	lacks timeframe.
10	courses in the areas	4, ¶ I.4.	Defendants stopped
11	of nutrition and		marketing and changed
12	weight loss,		the claims that were
13	including: Obesity		made on their websites
14	and the Control of		in or about February,
15	Body Weight;		2018. Dkt. 429-1 PX 38
16	Introductory		at 101-102; Ex. A, Jason
17	Nutrition, Drugs,		Cardiff Declaration ¶¶7,
18	and Behavior;		9, and 46-53. The last air
19	Honors Research		date and services
20	in Nutrition; and a		provided by Mercury
21	Special Seminar in		Media to Redwood for
22	Statistics for		Eupepsia Thin was on
23	Graduate Students		December 25, 2017. Dkt.
24	in Nutrition.		432-1 at 25. The last air
25	543. Dr. Levitsky has	Levitsky Expert Report	date for TBX Free was
26	has an established	(TRO PX-8), Dkt. 208, p.	on October 30, 2017.
27	history of scholarly	4, ¶ I.5.	Dkt. 432-2 at 3-8
28	research and		Guaraná, the active

1	writing related to		ingredient in Eupepsia
2	weight loss and		Thin, showed anti-
3	nutrition, including		adipogenic potential due
4	authoring or co-		to its ability to modulate
5	authoring: (1)		miRNAs and genes
6	more than 115		related to this process
7	articles published		(Lima et al., 2017) or an
8	in peer-reviewed		increase in energetic
9	scientific journals;		metabolism and
10	(2) more than 25		stimulation of
11	book chapters; and		mitochondrial biogenesis,
12	(3) two books.		contributing to control of
13	544. Dr. Levitsky has	Levitsky Expert Report	weight gain, even when
14	designed or co-	(TRO PX-8), Dkt. 208, p.	associated with high-fat
15	designed numerous	4-5, ¶ I.6.	diet (Lima et al., 2018).
16	clinical studies		Preparations containing
17	related to human		guarana in association
18	weight loss and the		with other herbal drugs,
19	results of many of		are widely used for
20	those studies have		weight loss in humans.
21	been published in		Ex. A, Declaration of
22	peer-reviewed		Jason Cardiff ¶20.
23	scientific journals.		
24	545. Dr. Levitsky's	Levitsky Expert Report	
25	professional	(TRO PX-8), Dkt. 208, p.	
26	responsibilities	6 ¶ I.7.	
27	have included		
28	editorial positions,		

1	as well as the		
2	review and		
3	analysis of		
4	hundreds of		
5	scientific articles		
6	submitted to peer		
7	reviewed scientific		
8	journals, including		
9	The International		
10	Journal of Obesity,		
11	Obesity, Appetite,		
12	Journal of		
13	Nutrition, and The		
14	American Journal		
15	of Clinical		
16	Nutrition.		
17	546. Dr. Levitsky has	Levitsky Expert Report	
18	received numerous	(TRO PX-8), Dkt. 208, p.	
19	professional	6 ¶ I.9.	
20	awards and honors,		
21	including the		
22	Society for		
23	Nutrition		
24	Education's		
25	Outstanding		
26	Research Award		
27	(1994) and the		
28	American Society		

1	for Nutrition's		
2	Excellence in		
3	Nutrition		
4	Education Award		
5	(2011).		
6	547. Through his own	Levitsky Expert Report	
7	research and	(TRO PX-8), Dkt. 208, p.	
8	regular reading of	6 ¶ 8.	
9	peer-reviewed		
10	scientific journals		
11	in his field, Dr.		
12	Levitsky keeps		
13	current on new		
14	developments and		
15	research in the		
16	areas of weight		
17	loss.		
18	548. Based upon his	Levitsky Expert Report	
19	knowledge,	(TRO PX-8), Dkt. 208, p.	
20	experience, and	6 ¶ I.10.	
21	training, Dr.		
22	Levitsky is an		
23	expert in the fields		
24	of weight loss,		
25	control of food		
26	intake, obesity, and		
27	bioenergetics.		
28	549. Dr. Levitsky	Levitsky Expert Report	

1	reviewed a	(TRO PX-8), Dkt. 208, p.	
2	literature	8.	
3	compilation		
4	provided to the		
5	FTC by the		
6	Defendants and		
7	additional		
8	materials that were		
9	provided by the		
10	FTC that were		
11	referenced, but not		
12	included, in the		
13	compilation.		
14	550. Dr. Levitsky stated	Levitsky Expert Report	
15	that his evaluation	(TRO PX-8), Dkt. 208, p.	
16	was based on well-	9, ¶ III.1.	
17	recognized		
18	principles of		
19	energetics and		
20	weight loss.		
21	551. Dr. Levitsky stated	Levitsky Expert Report	
22	that a decrease in	(TRO PX-8), Dkt. 208, p.	
23	body weight can	9, ¶ III.2.	
24	only occur if the		
25	rate at which		
26	calories are burned		
27	is greater than the		
28	rate at which they		

1	are consumed –		
2	that is, if the		
3	person has a		
4	negative energy		
5	balance.		
6	552. Dr. Levitsky stated	Levitsky Expert Report	
7	that a person can	(TRO PX-8), Dkt. 208, p.	
8	achieve a negative	9, ¶ III.2.	
9	energy balance by		
10	decreasing the		
11	number of calories		
12	consumed, by		
13	increasing physical		
14	activity, or by		
15	doing both.		
16	553. Dr. Levitsky stated	Levitsky Expert Report	
17	that dietary	(TRO PX-8), Dkt. 208,	
18	restriction is the	p.10, ¶ III.3.	
19	most common		
20	method to create a		
21	negative energy		
22	balance.		
23	554. Dr. Levitsky stated	Levitsky Expert Report	
24	that evidence about	(TRO PX-8), Dkt. 208, p.	
25	the effectiveness of	10, ¶ III.4.	
26	products that claim		
27	to cause weight-		
28	loss must be		

1	derived from		
2	procedures		
3	generally accepted		
4	in the relevant		
5	scientific		
6	community as		
7	capable of		
8	supporting valid		
9	conclusions about		
10	causation.		
11	555. Dr. Levitsky stated	Levitsky Expert Report	
12	that to support	(TRO PX-8), Dkt. 208, p.	
13	claims that a	10-11, ¶¶ III.5, III.6,	
14	product is effective	III.8.	
15	for weight loss,		
16	experts in the field		
17	would require		
18	randomized,		
19	placebo controlled,		
20	double blinded		
21	clinical trials in		
22	humans on the		
23	actual product or		
24	one with the same		
25	ingredients and		
26	dosages, and tested		
27	using the dosages		
28	for which the		

1	claims are made,		
2	and that replication		
3	of results by at		
4	least two different		
5	laboratories		
6	working		
7	independently		
8	increases		
9	confidence in the		
10	results, because		
11	this minimizes the		
12	effects of any bias		
13	that might arise		
14	from the study		
15	being performed		
16	by a single		
17	laboratory.		
18	556. Dr. Levitsky stated	Levitsky Expert Report	
19	that testing must be	(TRO PX-8), Dkt. 208, p.	
20	performed on	10-11, ¶ III.6.	
21	humans, not on		
22	animals or <i>in vitro</i> ,		
23	because animal and		
24	<i>in vitro</i> studies do		
25	not predict what		
26	might happen in		
27	humans.		
28	557. Dr. Levitsky stated	Levitsky Expert Report	

1	that randomization	(TRO PX-8), Dkt. 208, p.	
2	of subjects to	11, ¶ III.7.	
3	treatment and		
4	control conditions		
5	is critical to ensure		
6	that any observed		
7	effects can be		
8	attributed to the		
9	treatment being		
10	studied, and to		
11	control for		
12	potential bias that		
13	might affect the		
14	results.		
15	558. Dr. Levitsky stated	Levitsky Expert Report	
16	that the trial must	(TRO PX-8), Dkt. 208, p.	
17	use the same	11, ¶ III.8.C.	
18	ingredients as the		
19	product being		
20	tested.		
21	559. Dr. Levitsky stated	Levitsky Expert Report	
22	that the results of	(TRO PX-8), Dkt. 208, p.	
23	studies of multi-	14, ¶ IV.4.	
24	ingredient products		
25	cannot be		
26	extrapolated to a		
27	product with just		
28	one active		

1	ingredient.	
2	560. Dr. Levitsky stated	Levitsky Expert Report
3	that to constitute	(TRO PX-8), Dkt. 208, p.
4	competent and	11-12, ¶ III.8.D.
5	reliable evidence,	
6	the clinical study	
7	must use the same	
8	dose as the product	
9	at issue, because	
10	different doses	
11	may have different	
12	effects.	
13	561. Dr. Levitsky stated	Levitsky Expert Report
14	that the results of	(TRO PX-8), Dkt. 208, p.
15	studies on	14, ¶ IV.4.
16	conventional (or	
17	allopathic) active	
18	ingredients cannot	
19	be extrapolated to	
20	products using	
21	homeopathic	
22	dilutions of those	
23	ingredients.	
24	562. Dr. Levitsky stated	Levitsky Expert Report
25	that to support	(TRO PX-8), Dkt. 208, p.
26	weight loss	12, ¶ III.8.G.
27	efficacy claims, a	
28	clinical trial must	

1	be at least twelve		
2	weeks long.		
3	563. Dr. Levitsky stated	Levitsky Expert Report	
4	that a one-month	(TRO PX-8), Dkt. 208, p.	
5	study cannot	12, ¶ III.8.G.	
6	substantiate any		
7	weight loss claim.		
8	564. Dr. Levitsky stated	Levitsky Expert Report	
9	that because a	(TRO PX-8), Dkt. 208, p.	
10	clinical trial must	12, ¶ III.8.G.	
11	continue for at		
12	least the time		
13	period over which		
14	the product is		
15	claimed to have an		
16	effect, a four-		
17	month study, for		
18	example, cannot		
19	substantiate a six-		
20	month weight-loss		
21	claim.		
22	565. Dr. Levitsky stated	Levitsky Expert Report	
23	that to make valid	(TRO PX-8), Dkt. 208, p.	
24	conclusions about	12, ¶ III.8.H.	
25	weight loss		
26	efficacy, a clinical		
27	study must directly		
28	measure objective		

1	outcomes,		
2	including the		
3	participants'		
4	weight, and/or		
5	percentage of body		
6	fat, rather than		
7	using self-reported		
8	weights.		
9	566. Dr. Levitsky stated	Levitsky Expert Report	
10	that the clinical	(TRO PX-8), Dkt. 208, p.	
11	trial must show a	13, ¶ III.8.I.	
12	statistically		
13	significant		
14	treatment effect on		
15	the specific		
16	outcome about		
17	which a claim is		
18	made (not a related		
19	or surrogate		
20	outcome),		
21	including that the		
22	statistical		
23	comparison is		
24	between the test		
25	and control groups.		
26	567. Dr. Levitsky stated	Levitsky Expert Report	
27	to constitute	(TRO PX-8), Dkt. 208, p.	
28	competent and	13, ¶ 8.J.	

1	reliable evidence,		
2	the magnitude of		
3	the effect found in		
4	a clinical study		
5	must be the same		
6	or greater than that		
7	claimed.		
8	568. To evaluate the	Levitsky Expert Report	
9	claims for	(TRO PX-8), Dkt. 208,	
10	Eupepsia Thin, Dr.	p.7-8, ¶ II.2.	
11	Levitsky reviewed		
12	the documents		
13	produced or cited		
14	by Defendants as		
15	substantiation for		
16	Eupepsia Thin		
17	claims.		
18	569. Dr. Levitsky also	Levitsky Expert Report	
19	conducted an	(TRO PX-8), Dkt. 208, p.	
20	independent search	8-9, ¶ II.3; p. 13, ¶ IV.1.	
21	of the scientific		
22	literature for		
23	guarana, sublingual		
24	administration of		
25	pharmaceutical		
26	agents, and		
27	homeopathy,		
28	generally.		

1	570. Dr. Levitsky stated	Levitsky Expert Report
2	that he found “no	(TRO PX-8), Dkt. 208, p.
3	competent and	9, ¶ II.3.D.
4	reliable evidence to	
5	substantiate the	
6	efficacy claims that	
7	. . . Eupepsia Thin	
8	can cause	
9	biologically	
10	significant appetite	
11	suppression,	
12	reduction of food,	
13	intake, or weight	
14	loss.	
15	571. Dr. Levitsky stated	Levitsky Expert Report
16	that Paullinia	(TRO PX-8), Dkt. 208, p.
17	cupana is also	13, ¶ IV.1.
18	known as guarana,	
19	and that guarana	
20	seeds contain	
21	caffeine.	
22	572. Because gaurana	Levitsky Expert Report
23	seeds contain	(TRO PX-8), Dkt. 208, p.
24	caffeine, Dr.	13, ¶¶ IV.1, 2.
25	Levitsky reviewed	
26	scientific literature	
27	associating	
28	caffeine in	

1	relatively high		
2	doses with appetite		
3	suppression.		
4	573. Dr. Levitsky stated	Levitsky Expert Report	
5	that the best data	(TRO PX-8), Dkt. 208, p.	
6	about the effect of	13, ¶ IV.2.	
7	caffeine on appetite		
8	suppression come		
9	from a study that		
10	used a dose of		
11	about 420 mg of		
12	caffeine.		
13	574. Dr. Levitsky stated	Levitsky Expert Report	
14	there is no	(TRO PX-8), Dkt. 208, p.	
15	indication that	13-14, ¶ IV.2.	
16	Eupepsia Thin		
17	contains the same		
18	dose of caffeine.		
19	575. Dr. Levitsky stated	Levitsky Expert Report	
20	there is no sound	(TRO PX-8), Dkt. 208, p.	
21	evidence that	14, ¶ IV.2.	
22	caffeine		
23	consumption		
24	causes sustained		
25	weight loss.		
26	576. To evaluate the	Levitsky Expert Report	
27	claims for	(TRO PX-8), Dkt. 208, p.	
28	Eupepsia Thin, Dr.	1418, ¶ IV.3-IV.5.	

1	Levitsky reviewed		
2	50 articles cited by		
3	Redwood		
4	Scientific		
5	Technologies, Inc.		
6	in the literature		
7	compilation it		
8	provided in		
9	response to the		
10	Commission's		
11	CID.		
12	577. Dr. Levitsky stated	Levitsky Expert Report	
13	that none of the 50	(TRO PX-8), Dkt. 208, p.	
14	studies he	14, ¶ 3, 5.	
15	reviewed "yielded		
16	any credible		
17	scientific evidence		
18	to support the		
19	claim that		
20	Eupepsia Thin		
21	causes a		
22	reduction in food		
23	intake, or produces		
24	weight loss in		
25	humans . . [because		
26] none tested		
27	Eupepsia Thin		
28	itself or another		

1	product with the		
2	same dose and		
3	usage instructions		
4	as Eupepsia Thin		
5	(such as placing an		
6	oral strip on the		
7	tongue or roof of		
8	the mouth).”		
9	578. It is Dr. Levitsky’s	Levitsky Expert Report	
10	unrebutted expert	(TRO PX-8), Dkt. 208, p.	
11	opinion that	14-18, ¶¶ IV.4-5.	
12	information in		
13	Redwood’s		
14	literature		
15	compilation fails to		
16	provide credible		
17	evidence		
18	supporting		
19	Eupepsia Thin’s		
20	appetite		
21	suppression and		
22	weight loss claims		
23	because those		
24	studies were of		
25	multi-ingredient		
26	products.		
27	579. It is Dr. Levitsky’s	Levitsky Expert Report	
28	unrebutted expert	(TRO PX-8), Dkt. 208, p.	

1	opinion that	p. 14, ¶ IV.4, 5.	
2	information in		
3	Redwood's		
4	literature		
5	compilation fails to		
6	provide credible		
7	evidence		
8	supporting		
9	Eupepsia Thin's		
10	appetite		
11	suppression and		
12	weight loss claims		
13	because they did		
14	not test a		
15	homeopathic		
16	formulation of		
17	guarana, the active		
18	ingredient in		
19	Eupepsia Thin, and		
20	because the results		
21	of studies using a		
22	conventional (or		
23	allopathic) active		
24	ingredient cannot		
25	be extrapolated to		
26	products using		
27	homeopathic		
28	dilutions of the		

1	ingredient.	
2	580. It is Dr. Levitsky's	Levitsky Expert Report
3	unrebutted expert	(TRO PX-8), Dkt. 208, p.
4	opinion that	p. 14-18, ¶ IV.5.
5	information in	
6	Redwood's	
7	literature	
8	compilation fails to	
9	provide credible	
10	evidence	
11	supporting	
12	Eupepsia Thin's	
13	appetite	
14	suppression and	
15	weight loss claims	
16	because those	
17	materials did not	
18	address the	
19	efficacy of guarana	
20	by itself for	
21	appetite	
22	suppression or	
23	weight loss in	
24	humans.	
25	581. It is Dr. Levitsky's	Levitsky Expert Report
26	unrebutted expert	(TRO PX-8), Dkt. 208, p.
27	opinion that	14-18, ¶ IV.5.
28	information in	

1	Redwood's		
2	literature		
3	compilation fails to		
4	provide credible		
5	evidence		
6	supporting		
7	Eupepsia Thin's		
8	appetite		
9	suppression and		
10	weight loss claims		
11	because those		
12	materials contained		
13	only general		
14	assertions with no		
15	scientific citations		
16	to any data		
17	demonstrating		
18	weight loss or		
19	appetite		
20	suppression.		
21	582. It is Dr. Levitsky's	Levitsky Expert Report	
22	unrebutted expert	(TRO PX-8), Dkt. 208, p.	
23	opinion that	14-18, ¶ IV.5.	
24	information in		
25	Redwood's		
26	literature		
27	compilation fails to		
28	provide credible		

1	evidence		
2	supporting		
3	Eupepsia Thin's		
4	appetite		
5	suppression and		
6	weight loss claims		
7	because those		
8	materials involved		
9	animal or in vitro		
10	testing.		
11	583. It is Dr. Levitsky's	Levitsky Expert Report	
12	unrebutted expert	(TRO PX-8), Dkt. 208, p.	
13	opinion that	14-18, ¶ IV.5.	
14	information in		
15	Redwood's		
16	literature		
17	compilation fails to		
18	provide credible		
19	evidence		
20	supporting		
21	Eupepsia Thin's		
22	appetite		
23	suppression and		
24	weight loss claims		
25	because those		
26	materials did not		
27	include any food		
28	intake or body		

1	weight data.	
2	584. It is Dr. Levitsky's	Levitsky Expert Report
3	unrebutted expert	(TRO PX-8), Dkt. 208, p.
4	opinion that	14-18, ¶ IV.5.
5	information in	
6	Redwood's	
7	literature	
8	compilation fails to	
9	provide credible	
10	evidence	
11	supporting	
12	Eupepsia Thin's	
13	appetite	
14	suppression and	
15	weight loss claims	
16	because news	
17	articles and press	
18	releases are not	
19	scientific data	
20	about weight loss	
21	or appetite	
22	suppression.	
23	585. Dr. Levitsky stated	Levitsky Expert Report
24	that none of the	(TRO PX-8), Dkt. 208, p.
25	references he	18, ¶ IV.6.
26	identified through	
27	his own search of	
28	the scientific	

1	literature yielded	
2	any credible	
3	scientific evidence	
4	to support claims	
5	that Eupepsia Thin	
6	causes a reduction	
7	in appetite or food	
8	intake or produces	
9	weight loss in	
10	humans.	
11	586. Dr. Levitsky also	Levitsky Expert Report
12	used PubMed and	(TRO PX-8), Dkt. 208, p.
13	Google Scholar to	8-9, ¶ II.3B; p. 18 ¶ IV.6;
14	conduct an	p. 34-35 (Attachment B
15	independent search	to Levitsky Declaration).
16	of the scientific	
17	literature to	
18	determine whether	
19	there was other	
20	scientific support	
21	for the challenged	
22	Eupepsia Thin	
23	claims.	
24	587. Dr. Levitsky	Levitsky Expert Report
25	identified 105	(TRO PX-8), Dkt. 208, p.
26	references	18 ¶ IV.6; p. 34-45
27	mentioning	(Attachment B to
28	Paullinia cupana or	Levitsky Declaration).

1	guarana.	
2	588. It is Dr. Levitsky's	Levitsky Expert Report
3	unrebutted expert	(TRO PX-8), Dkt. 208, p.
4	opinion that none	18, ¶ IV.6.
5	of those studies	
6	yielded credible	
7	scientific evidence	
8	supporting the	
9	claim that	
10	Eupepsia thin	
11	causes a reduction	
12	in appetite or food	
13	intake, or produces	
14	weight loss in	
15	humans.	
16	589. Dr. Levitsky based	Levitsky Expert Report
17	this conclusion the	(TRO PX-8), Dkt. 208, p.
18	fact that none of	18-19, ¶ IV.6.
19	those studies tested	
20	Eupepsia Thin by	
21	itself or a similar	
22	product with	
23	Eupepsia Thin's	
24	dose and usage	
25	instructions.	
26	590. It is Dr. Levitsky's	Levitsky Expert Report
27	unrebutted expert	(TRO PX-8), Dkt. 208, p.
28	opinion that there	9, ¶ II.3.D; p. 14, ¶ IV.3;

1	was no credible	p. 18-19, ¶ IV.6.	
2	scientific evidence		
3	to support the		
4	claim that		
5	Eupepsia Thin is		
6	effective in		
7	suppressing		
8	appetite or food		
9	intake or causes		
10	any weight loss.		
11	591. It is Dr. Levitsky's	Levitsky Expert Report	
12	unrebutted expert	(TRO PX-8), Dkt. 208, p.	
13	opinion that the	9, ¶ II.3.D.	
14	materials he		
15	reviewed did not		
16	provide reliable		
17	scientific evidence		
18	to support a claim		
19	that Eupepsia Thin		
20	is an effective		
21	appetite		
22	suppressant and		
23	weight loss aid.		
24	592. It is Dr. Levitsky's	Levitsky Expert Report	
25	unrebutted expert	(TRO PX-8), Dkt. 208, p.	
26	opinion that the	9, ¶ II.3.D.	
27	materials he		
28	reviewed did not		

1	provide reliable		
2	scientific evidence		
3	to support a claim		
4	that Eupepsia Thin		
5	starts working in		
6	less than 20		
7	seconds, and		
8	suppresses a user's		
9	appetite within		
10	minutes.		
11	593. It is Dr. Levitsky's	Levitsky Expert Report	
12	unrebutted expert	(TRO PX-8), Dkt. 208, p.	
13	opinion that the	9, ¶ II.3.D.	
14	materials he		
15	reviewed did not		
16	provide reliable		
17	scientific evidence		
18	to support a claim		
19	that Eupepsia Thin		
20	enables users to		
21	lose 10, 20, or even		
22	100 pounds		
23	without dieting,		
24	giving up their		
25	favorite foods, or		
26	increasing their		
27	exercise.		
28	594. It is Dr. Levitsky's	Levitsky Expert Report	

1	unrebutted expert	(TRO PX-8), Dkt. 208, p.	
2	opinion that the	9, ¶ II.3.D.	
3	materials he		
4	reviewed did not		
5	provide reliable		
6	scientific evidence		
7	to support a claim		
8	that Eupepsia Thin		
9	enables users can		
10	lose 15 pounds		
11	their first month		
12	without dieting or		
13	changing their food		
14	or lifestyle.		
15	595. It is Dr. Levitsky's	Levitsky Expert Report	
16	unrebutted expert	(TRO PX-8), Dkt. 208, p.	
17	opinion that the	9, ¶ II.3.D.	
18	materials he		
19	reviewed did not		
20	provide reliable		
21	scientific evidence		
22	to support a claim		
23	that Eupepsia Thin		
24	enables users can		
25	lose as much as 20		
26	pounds in one		
27	month and as much		
28	as 50 pounds in		

1	three months.	
2	596. It is Dr. Levitsky's	Levitsky Expert Report
3	unrebutted expert	(TRO PX-8), Dkt. 208, p.
4	opinion that the	9, ¶ II.3.D.
5	materials he	
6	reviewed did not	
7	provide reliable	
8	scientific evidence	
9	to support a claim	
10	that Eupepsia Thin	
11	is more effective at	
12	causing weight loss	
13	than conventional	
14	calorie reduction	
15	and meal plans.	
16	597. Dr. Levitsky's	Levitsky Expert Report
17	unrebutted expert	(TRO PX-8), Dkt. 208, p.
18	opinion is that the	9, ¶ II.3.D.
19	materials he	
20	reviewed did not	
21	provide reliable	
22	scientific evidence	
23	to support a claim	
24	that Eupepsia Thin	
25	enables consumers	
26	to avoid gaining	
27	back weight they	
28	lose, without any	

1	lifestyle changes.	
2	598. The Cardiffs did not	Sanger Dec. (PX-52), p.
3	submit any expert	3, ¶ 17.
4	report disagreeing	
5	with Dr. Levitsky's	
6	conclusions about	
7	Eupepsia Thin or	
8	supporting the	
9	Eupesia Thin	
10	claims challenged	
11	in this proceeding.	

FTC Response to SUF 539 – 598: The Cardiffs' do not dispute any of the foregoing facts concerning Dr. Levitsky's qualification, education, experience, knowledge, research experience, literature review and his explanation of the standards that experts in the field of weight loss would use to determine whether claims for a specific appetite suppression and weight loss product are substantiated. Defendants also do not dispute Dr. Levitsky's evaluation of the challenged claims made for Eupepsia Thin using those standards or his conclusion that there is no competent and reliable evidence that Eupepsia Thin can cause appetite suppression or weight loss. The Cardiffs' objections concerning the claims reviewed by Dr. Levitsky do not create a disputed issue of material fact. They are apparently just an unsupported factual argument that they did not make those deceptive advertising claims as alleged in the complaint.

Dr. Levitsky expert report is relevant and helpful to the Court. Dr. Levitsy was asked to opine, as an expert in weight loss, control of food intake, obesity, and biogenics, on whether the claims challenged in the Commission's complaint were substantiated. That is exactly what he did, setting forth first the standards

that experts in the field would use to answer that question and then examining the relevant scientific evidence.

The Cardiffs are wrong when they state that Dr. Levitsky failed to state how much he is being paid or the t cases in which he had participated in the past four years. See Dkt. 208, p. 6.

Jason Cardiff's characterization of the findings of any scientific study is inadmissible under FRE 701 because he is providing testimony based on "scientific, technical, or other specialized knowledge within the scope of FRE 702," but has not been qualified as an expert.

The timeframe is the period when Defendants deceptively marketed and sold Eupepsia Thin (2017-2018, see Dkt. 1), and these facts are relevant to the Cardiffs' individual liability for injunctive and monetary relief.

D. Defendants' Claims That Eupepsia Thin Was Proven To Be Effective Were False

FTC Fact	FTC Citation	Cardiff Admit/Objection
599. Jason Cardiff and Eunjung Cardiff admit that during the time Eupepsia Thin was being advertised as a clinically proven weight loss aid, Defendants did not possess any human	J. Cardiff 3rd RFA Resp., p. 19, ¶ 208 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 42 (Att. 3)). E. Cardiff 3rd RFA Resp., p. 16, ¶ 202 (Sanger Dec. (PX-52), p.	Objection irrelevant and lacks timeframe. Defendants claims about the efficacy of Eupepsia Thin at the time that the FTC its lawsuit did

clinical studies conducted on Eupepsia Thin that showed Eupepsia Thin to be an effective weight loss aid.

2, ¶ 10 & p. 91 (Att. 7)).

not encompass the claims that are at the heart of the study Dr. Levitsky. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018. Accordingly, his opinions should be excluded under the Daubert test. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589, (); *FTC v. Qualcomm Inc.*, 2018 U.S. Dist. LEXIS 208197, *9, 2018 WL 6460573. Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims

that were made on their websites in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶7, 9, and 46-53. The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8 Guaraná, the active ingredient in Eupepsia Thin, showed anti-adipogenic potential due to its ability to modulate miRNAs

1 and genes related to
2 this process (Lima
3 et al., 2017) or an
4 increase in energetic
5 metabolism and
6 stimulation of
7 mitochondrial
8 biogenesis,
9 contributing to
10 control of weight
11 gain, even when
12 associated with
13 high-fat diet (Lima
14 et al., 2018).
15 Preparations
16 containing guarana
17 in association with
18 other herbal drugs,
19 are widely used for
20 weight loss in
21 humans. Ex. A,
22 Declaration of Jason
23 Cardiff ¶20.

24 **FTC Response to SUF 599:** The Cardiffs do not dispute that they previously
25 admitted that they did not have clinical studies showing that Eupepsia Thin was a
26 proven weight-loss aid when they were advertising it is a clinically-proven
27 weight loss aid.
28

Furthermore, their assertions concerning Dr. Levitsky are inapposite with respect to FTC SUF 599.

The timeframe is the period when Defendants marketed and sold Eupepsia Thin (2017-2018, see Dkt. 1), and these facts are relevant to the Cardiffs' individual liability for injunctive and monetary relief.

600. In addition to reporting product-specific sales, Redwood reported in its response to the Commission's CID that it had made sales of TBX-FREE and Eupepsia Thin to third party sellers in 2017 and the first four months of 2018 in the total amount of \$1,568,930.05.	Sands 3rd Dec. (PX-51), p. 18, ¶ 53 & p. 1901 (Att. 128).	Admit.
601. [reserved]		
602. [reserved]		

V. Prolongz

A. Defendants' Marketing of Prolongz

FTC Fact	FTC Citation	Cardiff Admit/Objection
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1	603. The target	Adkinson-Connor Dec.	Admit
2	audience for	(PX-38), p. 12, ¶ 52.	
3	Prolongz was		
4	people who		
5	wanted to improve		
6	their sexual		
7	performance.		
8	604. Defendants	Szymanski Dec. (PX-39),	Admit as to selling up
9	advertised and	p. 3, ¶ 14.	until October 12, 2018.
10	sold Prolongz oral		
11	film strips since at	Yallen Dec. (PX-40), p.	
12	least 2013.	2, ¶ 8 (Inter/Media	
13		purchased media time for	
14		Prolongz advertising on	
15		behalf of Run Away in	
16		2013 and 2014).	
17			
18		Walker Dec. (PX-32), p.	
19		1, ¶ 5; p. 79, ¶ 27.	
20			
21		Morris Dec. (TRO PX-4),	
22		Dkt. 9, p. 3, ¶ 4.	
23	FTC Response to SUF 603 – 604: The Cardiffs admit they sold Prolongz from		
24	at least 2013 to October 12, 2018 and do not dispute that they advertised		
25	Prolongz from at least 2013.		
26			
27			
28			

1	605. Eunjung Cardiff	E. Cardiff 3rd RFA	Objection irrelevant and
2	admits that	Resp., p. 17, ¶ 213	lacks timeframe.
3	Defendants	(Sanger Dec. (PX-52), p.	Defendants stopped
4	advertised a	2, ¶ 10 & p. 92 (Att. 7)).	marketing and changed
5	dissolvable oral		the claims that were
6	film strip called		made on their websites in
7	Prolongz.		or about February, 2018.
8			Dkt. 429-1 PX 38 at 101-
9			102; Ex. A, Jason Cardiff
10			Declaration ¶¶ 7, 9, and
11			46-53. The last air date
12			and services provided by
13			Mercury Media to
14			Redwood for Eupepsia
15			Thin was on December
16			25, 2017. Dkt. 432-1 at
17			25. The last air date for
18			TBX Free was on
19			October 30, 2017. Dkt.
20			432-2 at 3-8

FTC Response to SUF 605: The Cardiffs do not dispute the substance of FTC SUF 605 – which cites Eunjung Cardiff’s admission as its support – and they offer no explanation or documentation establishing that the admission was incorrect. Their objections do not create a genuine dispute as to a material fact. Defendants did not stop marketing Prolongz in February 2018, as Jason Cardiffs’ own Declaration exhibit 3 shows. Dkt. 491-3, p. 46 (Prolongz website captured June 14, 2018).

Furthermore, airings of TBX-FREE and Eupepsia Thin, are not relevant to

Prolongz.		
606. Jason Cardiff and Eunjung Cardiff admit that Defendants sold Prolongz from at least 2014 to 2018.	J. Cardiff 3rd RFA Resp., p. 21, ¶ 220 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 44 (Att. 3)). E. Cardiff 3rd RFA Resp., p. 17, ¶ 214 (Sanger Dec. (PX-52), p. 2, ¶ 10 & p. 92 (Att. 7)).	Admit as to selling up until October 12, 2018
FTC Response to SUF 606: The Cardiffs admit selling Prolongz from at least 2013 to October 12, 2018. See SUF 604.		
607. According to the Prolongz label, each film strip contains 10 mg Damiana Extract 1X and 10 mg of Ginseng Extract 1X.	Expert Report of Hossein Sadeghi-Nejad, MD, FACS (hereafter “Sadeghi-Nejad Expert Report”) (TRO PX-9), Dkt. 209, p. 7.	Admit
608. In its response to the Commission’s CID, Redwood Scientific stated that gross 2015 sales revenues for Prolongz were	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 2, ¶ 2 & Dkt. 7, p. 105 (Att. 003).	Admit

1	approximately		
2	\$4,265,068.57.		
3	609. In its response to	Sands 1st Dec. (TRO PX-	Admit
4	the Commission's	1), Dkt. 7, p. 2, ¶ 2 &	
5	CID, Redwood	Dkt. 7, p. 104-105 (Att.	
6	Scientific stated	003).	
7	that gross 2016		
8	sales revenues for		
9	Prolongz were		
10	approximately		
11	\$1,601,070.26.		
12	610. In its response to	Sands 1st Dec. (TRO PX-	Admit
13	the Commission's	1), Dkt. 7, p. 2, ¶ 2 &	
14	CID, Redwood	Dkt. 7, p. 105 (Att. 003).	
15	Scientific stated		
16	that gross 2017		
17	sales revenues for		
18	Prolongz through		
19	August 31, 2017		
20	were		
21	\$119,609.13.		
22	611. In response to the	Sands 3rd Dec. (PX-51),	Admit
23	Commission's	p. 18, ¶ 53 & p. 1901	
24	Civil Investigative	(Att. 128).	
25	Demand, Redwood		
26	Scientific reported	See SUF 608-610.	
27	gross Prolongz		
28	sales of		

1	\$5,985,747.96 for		
2	2015 through		
3	August 2017.		
4	612. Defendants	Walker Dec. (PX-32), p.	Objection irrelevant and
5	advertised	5, ¶ 21.	lacks timeframe.
6	Prolongz using		Defendants stopped
7	long-form and		marketing and changed
8	short-form		the claims that were
9	television		made on their websites in
10	commercials,		or about February, 2018.
11	websites, and		Dkt. 429-1 PX 38 at 101-
12	social media. ¹⁴		102; Ex. A, Jason Cardiff
13	613. Defendants	Adkinson-Connor Dec.	Declaration ¶¶7, 9, and
14	advertised	(PX-38), p. 1, ¶ 5; p. 2-3,	46-53. The last air date
15	Prolongz through	¶ 10 & p. 57-515 (Att. 9);	and services provided by
16	national television	p. 6-7, ¶¶ 25-29.	Mercury Media to
17	campaigns.		Redwood for Eupepsia
18	614. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	Thin was on December
19	Eunjung Cardiff	p. 21, ¶¶ 221, 223	25, 2017. Dkt. 432-1 at
20	admit that	(Sanger Dec. (PX-52), p.	25. The last air date for
21	Inter/Media	1, ¶ 6 & p. 44 (Att. 3)).	TBX Free was on
22	arranged for		October 30, 2017. Dkt.
23	Prolongz	E. Cardiff 3rd RFA	432-2 at 3-8
24	television	Resp., p. 17, ¶¶ 215, 217	

¹⁴ The Cardiffs submitted a single objection to SUF 612-634; the FTC's response begins on p. 360.

1	advertising to be	(Sanger Dec. (PX-52), p.
2	broadcast on	2, ¶ 10 & p. 92 (Att. 7)).
3	national cable	
4	television.	
5	615. Inter/Media	Szymanski Dec. (PX-39),
6	purchased media	p. 2, 3, ¶¶ 9, 11, 14.
7	time to air	
8	Prolongz	See also Yallen Dec.
9	television ads for	(PX-40), p. 2, 5-6 ¶ 9 16
10	Run Away during	(D, F).
11	a test period from	
12	late 2013 to	
13	March 2014.	
14	616. After Jason	See SUF 102.
15	Cardiff signed the	
16	Insertion Order for	Szymanski Dec. (PX-39),
17	Prolongz	p. 4, ¶ 16 & p. 68-189
18	advertising,	(Att. 10).
19	Inter/Media	
20	purchased media	See also Yallen Dec.
21	time for Prolongz	(PX-40), p. 2, ¶ 9 & p. 8-
22	television ads on	14 (Att. 1) (Cardiff
23	TV networks	signed insertion order for
24	across the United	Prolongz ads); p. 5-6, ¶
25	States from April	16(D) & p. 69-70 (Att.
26	2014 through	3); p. 141 (Att. 8)
27	September 2014.	(Prolongz ads ran from
28		Apr. 2014-Sept. 2014).

1	617. MediaPoint	Szymanski Dec. (PX-39),	
2	Network, Inc., a	p. 4-5, ¶ 21 & p. 221-259	
3	wholly owned	(Att. 14-16).	
4	subsidiary of		
5	Inter/Media, also		
6	purchased media		
7	time for Prolongz		
8	television		
9	advertisements		
10	from June 2014		
11	through October		
12	2014.		
13	618. All of the	Szymanski Dec. (PX-39),	
14	Prolongz	p. 4, ¶ 17.	
15	advertising for		
16	which Inter/Media		
17	purchased media		
18	time focused on		
19	the messages of		
20	longer lasting sex		
21	and preventing		
22	premature		
23	ejaculation.		
24	619. At Run Away's	Szymanski Dec. (PX-39),	
25	request,	p. 4-5, ¶ 21 & p. 221-259	
26	Inter/Media and	(Att. 14-16).	
27	its wholly owned		
28	subsidiary,		

1	MediaPoint	
2	Network, Inc.,	
3	worked with	
4	media buying	
5	companies	
6	Cannella	
7	Response	
8	Television, LLC	
9	and Havas Edge	
10	to place Prolongz	
11	advertising on TV	
12	networks.	
13	620. Jason Cardiff	J. Cardiff 3rd RFA Resp.,
14	admits that	p. 23, ¶ 236 (Sanger Dec.
15	Corporate	(PX-52), p. 1, ¶ 6 & p. 46
16	Defendants	(Att. 3)).
17	purchased media	
18	time for Prolongz	Sands 3rd Dec. (PX-51),
19	television	p. 3, 17, ¶ 9, 51 & p. 40-
20	advertising from	46 (Att. 4).
21	Havas Edge.	
22		See also Walker Dec.
23		(PX-32), p. 6-7, ¶¶ 25-26,
24		28.
25	621. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,
26	Eunjung Cardiff	p. 23, ¶ 237 (Sanger Dec.
27	admit that Havas	(PX-52), p. 1, ¶ 6 & p. 46
28	Edge arranged for	(Att. 3)).

1	Prolongz television	
2	advertising to be	E. Cardiff 3rd RFA
3	broadcast on	Resp., p. 19, ¶ 231
4	national cable	(Sanger Dec. (PX-52), p.
5	television.	2, ¶ 10 & p. 94 (Att. 7)).
6		
7		See also Walker Dec.
8		(PX-32), p. 6-7, ¶¶ 25-26,
9		28.
10	622. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,
11	Eunjung Cardiff	p. 21, ¶ 224 (Sanger Dec.
12	admit that	(PX-52), p. 1, ¶ 6 & p. 44
13	Corporate	(Att. 3)).
14	Defendants	
15	purchased media	E. Cardiff 3rd RFA
16	time for Prolongz	Resp., p. 18, ¶ 218
17	television	(Sanger Dec. (PX-52), p.
18	advertising from	2, ¶ 10 & p. 93 (Att. 7)).
19	Cannella	
20	Response	
21	Television, LLC.	
22	623. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,
23	Eunjung Cardiff	p. 21, ¶ 225 (Sanger Dec.
24	admit that	(PX-52), p. 1, ¶ 6 & p. 44
25	Cannella	(Att. 3)).
26	Response	
27	Television, LLC	E. Cardiff 3rd RFA
28	arranged for	Resp., p. 18, ¶ 219

1	Prolongz	(Sanger Dec. (PX-52), p.
2	advertising to be	2, ¶ 10 & p. 93 (Att. 7)).
3	broadcast on	
4	national cable	
5	television.	
6	624. Cannella	Adkinson-Connor Dec.
7	purchased media	(PX-38), p. 1, ¶ 5; p. 7,
8	time for Prolongz	¶¶ 27-29; p. 2-3, ¶ 10 &
9	television	p. 57-75 and p. 102-158
10	advertising for	(Att. 9).
11	Redwood in 2014,	
12	2015, and 2016.	Walker Dec. (PX-32), p.
13		8, ¶ 34.
14	625. In 2014-	Adkinson-Connor Dec.
15	2016,Cannella	(PX-38), p. 1-2, ¶ 6; p. 7,
16	purchased media	¶¶ 27-29; p. 2-3, ¶ 10 &
17	time for Prolongz	p. 57-75 and p. 102-158
18	long form ads	(Att. 9).
19	PROLONGZ PI,	
20	PROLONGZ	See also J. Cardiff 3rd
21	2015,	RFA Resp., p. 21-22, ¶
22	PROLONGZ	226 (PROLONGZ 2015);
23	ADVANCED	¶ 227 (PROLONGZ
24	MENS INSTITUE	ADVANCED MENS
25	REV.,	INSTITUTE REV); ¶
26	PROLONGZ	228 (PROLONGZ
27	ADVANCED	ADVANCED MENS
28	MENS	INSTITUTE REV. PI); ¶

1	INSTITUTE	229 (PROLONGZ	
2	REV. PI,	REVISED ADDED	
3	PROLONGZ	DISCLAIMERS) (Sanger	
4	REVISED	Dec. (PX-52), p. 1, ¶ 6 &	
5	ADDED	p. 44-45 (Att. 3)).	
6	DISCLAIMERS,		
7	AND	See also E. Cardiff 3rd	
8	PROLONGZ	RFA Resp., p. 18, ¶ 220	
9	WITH NEW	(PROLONGZ 2015); ¶	
10	TAGS from	221 (PROLONGZ	
11	television stations	ADVANCED MENS	
12	that aired them	INSTITUTE REV); ¶	
13	across the United	222 (PROLONGZ	
14	States.	ADVANCED MENS	
15		INSTITUTE REV. PI); ¶	
16		223 (PROLONGZ	
17		REVISED ADDED	
18		DISCLAIMERS) (Sanger	
19		Dec. (PX-52), p. 2, ¶ 10	
20		& p. 93 (Att. 7)).	
21	626. Most of the ads for	Adkinson-Connor Dec.	
22	which Cannella	(PX-38), p. 3-4, ¶ 13.	
23	purchased media		
24	time were long		
25	form ads lasting		
26	twenty-eight		
27	minutes and 30		
28	seconds (28:30).		

1	627. In 2015, Cannella	Adkinson-Connor Dec.
2	also purchased	(PX-38), p. 7, ¶ 28; p. 2-
3	media time for the	3, ¶ 10 & p. 157 (Att. 9).
4	Prolongz short-	
5	form ad,	
6	PROLONGZ	
7	FREE TRIAL :60.	
8	628. Cannella	Sands 3rd Dec. (PX-51),
9	purchased media	p. 12, ¶ 41 & p. 1686
10	time for 59 airings	(Att. 125).
11	of the long-form	
12	ad entitled	Adkinson-Connor Dec.
13	PROLONGZ	(PX-38), p. 6-7, ¶ 25; p.
14	REVISED	2-3, ¶ 10 & p. 157-158
15	ADDED	(Att. 9).
16	DISCLAIMERS	
17	with master	
18	number 442749	
19	that it produced to	
20	the FTC as a file	
21	bates-stamped	
22	CAN-	
23	CARDIFF000003	
24	7.	
25	629. The long-form ads	Adkinson-Connor Dec.
26	entitled	(PX-38), p. 3, ¶ 11; p. 7,
27	PROLONGZ PI,	¶¶ 26-27.
28	PROLONGZ	

1	ADVANCED		
2	MENS		
3	INSTITUTE		
4	REV., and		
5	PROLONGZ		
6	ADVANCED		
7	MENS		
8	INSTITUTE		
9	REV. PI share the		
10	same master		
11	number (428629).		
12	630. Cannella	Sands 3rd Dec. (PX-51),	
13	purchased media	p. 12, ¶ 41 & p. 1686-	
14	time for 760	1687 (Att. 125).	
15	airings of		
16	PROLONGZ PI,	Adkinson-Connor Dec.	
17	2,014 airings of	(PX-38), p. 6-7, ¶ 25; p.	
18	PROLONGZ	2-3, ¶ 10 & p. 57-75 (Att.	
19	ADVANCED	9) for PROLONGZ PI; p.	
20	MENS	106-135 (Att. 9) for	
21	INSTITUTE	PROLONGZ	
22	REV., and 1,590	ADVANCED MENS	
23	airings of	INSTITUTE REV.; p.	
24	ADVANCED	135-157 (Att. 9) for	
25	MENS	ADVANCED MENS	
26	INSTITUTE	INSTITUTE REV. PI.	
27	REV. PI, for a		
28	total of 4,364		

1	airings of the three	
2	ads that share the	
3	428629 master	
4	number.	
5	631. Cannella	Sands 3rd Dec. (PX-51),
6	purchased media	p. 12, ¶ 41 & p. 1687
7	time for 320	(Att. 125).
8	airings of the	
9	long-form ad	Adkinson-Connor Dec.
10	entitled	(PX-38), p. 6-7, ¶ 25; p.
11	PROLONGZ	2-3, ¶ 10 & p. 102-106
12	2015 with master	(Att. 9).
13	number 449775	
14	that it produced to	
15	the FTC as a file	
16	bates-stamped	
17	CAN-	
18	CARDIFF000004	
19	3.	
20	632. Cannella	Sands 3rd Dec. (PX-51),
21	purchased media	p. 12, ¶ 41 & p. 1687
22	time for 1 airing	(Att. 125).
23	of the long-form	
24	ad entitled	Adkinson-Connor Dec.
25	PROLONGZ	(PX-38), p. 6-7, ¶ 25; p.
26	WITH NEW	2-3, ¶ 10 & p. 158 (Att.
27	TAGS with master	9).
28	number 446662	

1	that it produced to		
2	the FTC as a file		
3	bates-stamped		
4	CAN-		
5	CARDIFF000003		
6	1.		
7	633. Cannella	Sands 3rd Dec. (PX-51),	
8	purchased media	p. 11-12, ¶¶ 40, 41 & p.	
9	time for 4 airings	1687 (Att. 125).	
10	of the short-form		
11	ad entitled	Adkinson-Connor Dec.	
12	PROLONGZ	(PX-38), p. 6-7, ¶ 25; p.	
13	FREE TRIAL :60	2-3, ¶ 10 & p. 157 (Att.	
14	with master	9).	
15	number 433674		
16	that the FTC		
17	obtained from		
18	Cannella's dub		
19	house, Extreme		
20	Reach.		
21	634. Cannella	Sands 3rd Dec. (PX-51),	
22	purchased media	p. 12, ¶ 41 & p. 1686-	
23	time for a total of	1687 (Att. 125).	
24	4,748 airings of		
25	Prolongz	See SUF 628, 630-633.	
26	advertising.		
27	FTC Response to SUF 612-634: The Cardiffs do not dispute the substance of		
28	FTC SUF 612-634 concerning the advertising of Prolongz on national television		

from late 2013 onward, and their objections do not create disputed issues of material fact. Defendants' use of television advertising to promote Prolongz is clearly relevant to their liability under Sections 5 and 12 of the FTC Act. The timeframe of the airings placed by Inter/Media, Havas Edge, and Cannella is clearly identified in the declarations submitted by the Commission and referenced in these FTC SUF.

The Defendants' assertions concerning the purported last airings of advertising for TBX-FREE and Eupepsia Thin are irrelevant to SUF dealing with Prolongz.

635. Defendants advertised Prolongz on the websites www.prolongz.com and www.amilonger.com.	Walker Dec. (PX-32), p. 9, ¶ 37 & p. 582 (Att. 56) (Prolongz.com); p. 589 (Att. 57) (amilonger.com). Adkinson-Connor Dec. (PX-38), p. 13, ¶ 60. Morris Dec. (TRO PX-4), Dkt. 9, p. 3, ¶ 4 & p. 4-10 (Att. A).	Admit.
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B. Defendants' Sexual Performance Claims for Prolongz

FTC Fact	FTC Citation	Cardiff Admit/Objection
636. At least three of Defendants' Prolongz TV ads	Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 861, 869, ln. 10-12 (Att. 98).	Objection irrelevant and lacks timeframe. Defendants stopped

1 2 3 4 5 6 7 8 9	stated that “AMI has given me longevity . . . that ability to control myself.”	Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 914, 921, ln. 23-25 (Att. 99). Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 1011, 1020, ln. 11-13 (Att. 101).	marketing and changed the claims that were made on their websites in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and 46-53. The last air date and services provided by
10 11 12 13 14 15 16 17 18 19 20 21	637. At least three of Defendants’ Prolongz TV ads stated “As far as my performance has gone, since I’ve been with AMI, I can go a long, long time.”	Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 861, 894, ln. 4-6 (Att. 98). Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 914, 946, ln. 18-19 (Att. 99). Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 1011, 1044, ln. 14-15 (Att. 101).	Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8
22 23 24 25 26 27 28	638. At least three of Defendants’ Prolongz TV ads stated “the product helps you last longer.”	Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 861, 875, ln. 22-23 (Att. 98). Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 914, 928, ln. 13-14 (Att. 99).	

	Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 1011, 1026, ln. 11-12 (Att. 101).	
639. At least four of Defendants’ Prolongz TV ads promised that taking Prolongz would cause sex and intimacy to be “longer,” “long lasting,” “longer lasting,” “last longer,” “go longer,” and “go a long long time.”	Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 861, 865, ln. 4, 12, 14; p. 866, ln. 17-19; p. 868, ln. 8-9; p. 875, ln. 22-23; p. 876, ln. 1-2; p. 877, ln. 8-9; p. 882, ln. 22-24; p. 891, ln. 24; p. 892, ln. 5, 10-11; p. 894, ln. 5-6; p. 895, ln. 22; p. 901, ln. 12-13; p. 902, ln. 10-12; p. 903, ln. 20-21; p. 903, ln. 23 – 904, ln. 2; p. 906, ln. 23-25 (Att. 98).	
	Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 914, 917, ln. 20-21; p. 918, ln. 3, 5; p. 919, ln. 7-10; p. 920, ln. 21-22; p. 928, ln. 13-14, 17-18; p. 929, ln. 20-21, 24-25; p. 935, ln. 12-13; p. 945, ln. 1-2, 10-	

1	19; p. 946, ln. 18-19; p.	
2	948, ln. 9-11; p. 953, ln.	
3	14-18; p. 954, ln. 15-17;	
4	p. 955, ln. 25 – 956, ln. 2;	
5	p. 956, ln. 3-8; p. 959, ln.	
6	4-6 (Att. 99).	
7		
8	Sands 3rd Dec. (PX-51),	
9	p. 9-11, ¶ 37 & p. 966,	
10	969, ln. 25 – 970, ln. 2; p.	
11	970, ln. 5-8, 15, 16-17; p.	
12	971, ln. 5-6; p. 972, ln. 1-	
13	3; p. 973, line 21-24; p.	
14	974, ln. 5-6; p. 975, ln.	
15	19-24; p. 976, ln. 2-3, 4,	
16	6-7; p. 978, ln. 19-21; p.	
17	979, ln. 4-5, 11-14, 20-	
18	21; p. 981, ln. 18-21; p.	
19	982, ln. 21-22, 23-24; p.	
20	983, ln. 2-4, 8-9; p. 986,	
21	ln. 7-9; p. 987, ln. 9-11,	
22	19-21; p. 988, ln. 8; p.	
23	990, ln. 11-14, 20-21, 24-	
24	25; p. 992, ln. 14-15; p.	
25	995, ln. 13-14, 15-16, 22-	
26	23; p. 997, ln. 20, 22-23;	
27	p. 999, ln. 17; p. 1002, ln.	
28	20-22; p. 1006, ln. 6-8,	

1	15-16 (Att. 100).	
2		
3	Sands 3rd Dec. (PX-51),	
4	p. 9-11, ¶ 37 & p. 1011,	
5	1015, ln. 3-4, 11-13; p.	
6	1016, ln. 24 – 1017, ln. 2;	
7	p. 1018, ln. 25 – 1019, ln.	
8	1; p. 1020, ln. 16-22; p.	
9	1021, ln. 24-25; p. 1022,	
10	ln. 21; p. 1026, ln. 11-12,	
11	15-16; p. 1027, ln. 23-25;	
12	p. 1028, ln. 19, 21-24; p.	
13	1030, ln. 2-3, 24; p.	
14	1032, ln. 14-16; p. 1033,	
15	ln. 1-2; p. 1038, ln. 6, 8-	
16	12; p. 1039, ln. 14-15; p.	
17	1040, ln. 11; p. 1042, ln.	
18	4-19, 14-16, 20-25; p.	
19	1044, ln. 14-15; p. 1046,	
20	ln. 7-10, 14, 16-19; p.	
21	1047, ln. 22-23; p. 1048,	
22	ln. 19; p. 1050, ln. 20-24;	
23	p. 1053, ln. 17-24; p.	
24	1056, ln. 24 – 1057, ln. 1;	
25	p. 1057, ln. 20, 22-25; p.	
26	1059, ln. 3-4, 25 (Att.	
27	101).	

FTC Response to SUF 636-639: The Cardiffs do not dispute that their Prolongz

1 television ads made these claims, and their objections do not create disputed
2 issues of material fact.

3
4 Defendants' conclusory statement that they stopped marketing Prolongz in
5 February 2018 is insufficient to create a genuine dispute of material fact in light
6 of specific evidence contradicting that general statement. Jason Cardiffs' own
7 Declaration shows an active Prolongz website as of June 14, 2018. Dkt. 491-3,
8 p. 46 (Prolongz website captured June 14, 2018). Indeed, that June 14, 2018
9 website excerpt says that Prolongz "increase[s] ejaculatory control so men can last
10 longer during sex" and "lengthen the amount of time it takes men to ejaculate."

11
12 Airings of TBX-FREE and Eupepsia Thin, are not relevant to Prolongz.

13 640. Defendants'	Morris Dec. (TRO PX-4),	Objection irrelevant and
14 www.prolongz.co	Dkt. 9, p. 2, ¶ 4 & p. 6	lacks timeframe.
15 m website said	(Att. A).	Defendants stopped
16 that "Prolongz is		marketing and changed
17 guaranteed to		the claims that were
18 increase your		made on their websites in
19 ejaculatory control		or about February, 2018.
20 levels and overall		Ex. A, Jason Cardiff
21 sexual		Declaration ¶¶ 7, 9, and
22 performance!"		46-53.

23 **FTC Response to SUF 640:** The Cardiffs do not dispute that the prolongz.com
24 website made this claim, and their objections do not create a disputed issue of
25 material fact.

26 Defendants clearly did not stop marketing Prolongz in February 2018, as Jason
27 Cardiffs' own Declaration exhibit 3 shows. Dkt. 491-3, p. 46 (Prolongz website
28 captured June 14, 2018). Indeed, that June 14, 2018 website excerpt says that

Prolongz “increase[s] ejaculatory control so men can last longer during sex” and “lengthen the amount of time it takes men to ejaculate.”

Furthermore, airings of TBX-FREE and Eupepsia Thin, are not relevant to Prolongz.

641. On the internet website www.prolongz.com, Defendants promise “[l]onger lasting sex is achievable. Prolongz™ will make you firmer and last longer.”	Morris Dec. (TRO PX-4), Dkt. 9, p. 2, ¶ 4 & p. 8 (Att. A).	Admit
642. Defendants’ www.prolongz.com website said: “LONGER LASTING SEX INCREASED EJACULATION CONTROL TIME”	Morris Dec. (TRO PX-4), Dkt. 9, p. 2, ¶ 4 & p. 7 (Att. A).	Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018. Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and
643. Defendants’ www.prolongz.com website said that Prolongz is an	Morris Dec. (TRO PX-4), Dkt. 9, p. 2, ¶ 4 & p. 8 (Att. A).	46-53. Red Ginseng has a “significant” effect on erectile dysfunction.

1	FDA registered		2008 study in US
2	drug “which helps		National Library of
3	in the prevention of		Medicine, National
4	Premature		Institutes of Health. Ex.
5	Ejaculation (PE).		A, Declaration of Jason
6	It is a first of its		Cardiff. ¶23.
7	kind product which		In a study of 80 people,
8	uses Oral		40 of who were on
9	(sublingual)		placebo and 40 of who
10	dissolvable Strip		took Red Ginseng, all
11	delivery		patients increased their
12	technology for the		unit of measure in
13	treatment of PE.”		Clinical Trial. Ex. A,
14	644. Defendants’	Morris Dec. (TRO PX-4),	Declaration of Jason
15	www.prolongz.co	Dkt. 9, p. 2, ¶ 4 & p. 4, 5	Cardiff. ¶24.
16	m website said	(Att. A).	Red Ginseng increases
17	that “[i]n clinical		the production of Nitric
18	studies, the		Oxide which leads to
19	ingredients in		improved erectile
20	Prolongz™ by		function and vascular
21	Advanced Men’s		endothelial function. Ex.
22	Institute (AMI)		A, Declaration of Jason
23	were proven to		Cardiff. ¶25.
24	increase		
25	ejaculatory control		
26	level of over 97%		
27	in men.”		
28	645. On the internet	Morris Dec. (TRO PX-4),	

1	website	Dkt. 9, p. 2, ¶ 4 & p. 8	
2	www.prolongz.co	(Att. A).	
3	m, Defendants		
4	stated that		
5	Prolongz is		
6	“[p]roven to		
7	effectively		
8	increase the length		
9	in Sex for over		
10	97% of Thousands		
11	of Men who have		
12	tried Prolongz.”		
13	646. On the internet	Morris Dec. (TRO PX-4),	
14	website	Dkt. 9, p. 2, ¶ 4 & p. 10	
15	www.prolongz.co	(Att. A).	
16	m, Defendants		
17	include		
18	testimonials like		
19	this one: “It’s		
20	brought adventure		
21	back into our sex		
22	life. Better than it		
23	was when we		
24	were a lot younger		
25	...I love to have		
26	sex and the longer		
27	it goes on the		
28	more I enjoy it.		

<p>The bottom line is the Strips work!”</p>		
<p>FTC Response to SUF 642-646: The Cardiffs do not dispute that prolongz.com contained the challenged advertising claims, including claims of longer lasting sex and ejaculatory control and claims that Prolongz is “proven to effectively increase the length in Sex for over 97% of Thousands of Men who have tried Prolongz.”</p> <p>The timeframe is the period Defendants advertised on prolongz.com. Defendants sold Prolongz from at least 2013 to October 12, 2018. See SUF 604.</p> <p>The fact that the challenged advertising claims appeared on Defendants’ website are relevant to proving that the challenged claims were made and widely disseminated.</p>		
<p>647. Jason and Eunjung Cardiff admit that Prolongz was advertised as a male sexual performance aid.</p>	<p>J. Cardiff 3rd RFA Resp., p. 24, ¶ 243 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 47 (Att. 3)).</p> <p>E. Cardiff 3rd RFA Resp., p. 20, ¶ 237 (Sanger Dec. (PX-52), p. 2, ¶10 & p. 95 (Att. 7)).</p>	<p>Admit</p>
<p>648. Jason and Eunjung Cardiff admit that Prolongz was advertised as substantially</p>	<p>J. Cardiff 3rd RFA Resp., p. 24-25, ¶ 244 (Sanger Dec. (PX-52), p. 1, ¶ 6 & p. 47-48 (Att. 3)).</p>	<p>Objection irrelevant and lacks timeframe.</p> <p>Defendants stopped marketing and changed the claims that were</p>

1	increasing	E. Cardiff 3rd RFA	made on their websites in
2	ejaculation control	Resp., p. 20, ¶ 238	or about February, 2018.
3	and the duration	(Sanger Dec. (PX-52), p.	Ex. A, Jason Cardiff
4	of sex.	2, ¶ 10 & p. 95 (Att. 7)).	Declaration ¶¶7, 9, and
5			46-53.
6			Red Ginseng has a
7			“significant” effect on
8			erectile dysfunction.
9			2008 study in US
10			National Library of
11			Medicine, National
12			Institutes of Health. Ex.
13			A, Declaration of Jason
14			Cardiff. ¶23.
15			In a study of 80 people,
16			40 of who were on
17			placebo and 40 of who
18			took Red Ginseng, all
19			patients increased their
20			unit of measure in
21			Clinical Trial. Ex. A,
22			Declaration of Jason
23			Cardiff. ¶24.
24			Red Ginseng increases
25			the production of Nitric
26			Oxide which leads to
27			improved erectile
28			function and vascular

endothelial function. Ex. A, Declaration of Jason Cardiff. ¶25.

FTC Response to SUF 648: The Cardiffs do not dispute that Prolongz was advertised as substantially increasing ejaculation control and the duration of sex, and they provide no explanation or documentation establishing that their previous admissions were erroneous. Their objections do not create disputed issues of material fact.

Defendants did not stop marketing Prolongz in February 2018, as Jason Cardiffs’ own Declaration exhibit 3 shows. Dkt. 491-3, p. 46 (Prolongz website captured June 14, 2018). Indeed, that June 14, 2018 website excerpt says that Prolongz “increase[s] ejaculatory control so men can last longer during sex” and “lengthen the amount of time it takes men to ejaculate.”

Furthermore, Jason Cardiff’s characterization of the findings of any scientific study is inadmissible under FRE 701 because he is providing testimony based on “scientific, technical, or other specialized knowledge within the scope of FRE 702,” but has not been qualified as an expert.

C. Defendants’ Sexual Performance Claims for Prolongz Were False or Unsubstantiated

FTC Fact	FTC Citation	Cardiff Admit/Objection
649. The FTC submitted the Declaration and accompanying expert report of	Declaration of Hossein Sadeghi-Nejad, MD, FACS (TRO PX-9), Dkt. 209 to 209-8.	Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed

Hossein Sadeghi-Nejad, M.D. ¹⁵		the claims that were made on their websites in or about February, 2018.
650. The Commission identified Dr. Sadeghi-Nejad to Defendants in its September 26, 2019 Initial disclosures.	Sanger Dec. (PX-52), p. 2-3, ¶ 15. See also Sanger Dec. (PX-52), p. 2, ¶¶ 13-14 (FTC sent counsel for the Cardiffs copies of its four expert reports in March and April 2019).	Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and 46-53. Red Ginseng has a “significant” effect on erectile dysfunction. 2008 study in US National Library of Medicine, National Institutes of Health. Ex. A, Declaration of Jason Cardiff. ¶ 23.
651. Dr. Sadeghi-Nejad is a medical doctor and certified by the American Board of Urology.	Sadeghi-Nejad Expert Report (TRO PX-9), Dkt. 209, p. 4.	In a study of 80 people, 40 of who were on placebo and 40 of who took Red Ginseng, all patients increased their unit of measure in Clinical Trial. Ex. A, Declaration of Jason Cardiff. ¶ 24.
652. Dr. Sadeghi-Nejad is a Professor of Surgery/Urology at Rutgers New Jersey Medical School, and the Chief of Urology at the New Jersey	Sadeghi-Nejad Expert Report (TRO PX-9), Dkt. 209, p. 4.	

¹⁵ The Cardiffs submitted a single objection to SUF 649-706; the FTC’s response begins on p. 401.

1	Veterans Affairs		Red Ginseng increases
2	Hospitals.		the production of Nitric
3	653. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	Oxide which leads to
4	is the Director of	Report (TRO PX-9), Dkt.	improved erectile
5	the Center for Male	209, p. 4.	function and vascular
6	Reproductive		endothelial function. Ex.
7	Medicine at the		A, Declaration of Jason
8	Hackensack		Cardiff. ¶25.
9	University Medical		Dr. Sadeghi-Nejad was
10	Center, where he		not provided accurate
11	maintains a private		information about the
12	practice.		modified product claims
13	654. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	made for Eupepsia Thin
14	has served as a	Report (TRO PX-9), Dkt.	[sic] and. Accordingly,
15	member of	209, p. 4.	his opinions should be
16	numerous		excluded under the
17	professional		Daubert test. <i>Daubert v.</i>
18	organizations		<i>Merrell Dow Pharms.,</i>
19	including the		<i>Inc.</i> , 509 U.S. 579, 589,
20	American		() ; <i>FTC v. Qualcomm</i>
21	Urological		<i>Inc.</i> , 2018 U.S. Dist.
22	Association, the		LEXIS 208197, *9, 2018
23	American Society		WL 6460573.
24	of Reproductive		
25	Medicine, and the		
26	Sexual Medicine		
27	Society of North		
28	America.		

1	655. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert
2	has served on the	Report (TRO PX-9), Dkt.
3	examination	209, p. 4.
4	committee of the	
5	American Board of	
6	Urology.	
7	656. As a member of	Sadeghi-Nejad Expert
8	the American	Report (TRO PX-9), Dkt.
9	Urological	209, p. 4.
10	Association	
11	Guidelines Panel, a	
12	group tasked with	
13	preparation of	
14	evidence-based	
15	practice guidelines	
16	for urologists in the	
17	United States, Dr.	
18	Sadeghi-Nejad co-	
19	authored	
20	Guidelines on	
21	Erectile	
22	Dysfunction	
23	(released in 2017),	
24	and the AUA	
25	Guidelines on	
26	Peyronie's Disease	
27	(released in 2015).	
28	657. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert

1	has served on the	Report (TRO PX-9), Dkt.
2	Editorial Board of	209, p. 4.
3	the Journal of	
4	Sexual Medicine	
5	and as a scientific	
6	reviewer for	
7	numerous peer-	
8	reviewed journals.	
9	658. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert
10	has treated many	Report (TRO PX-9), Dkt.
11	patients with	209, p. 5.
12	urological	
13	disorders,	
14	including	
15	premature	
16	ejaculation and	
17	sexual dysfunction.	
18	659. Based upon his	Sadeghi-Nejad Expert
19	education, training,	Report (TRO PX-9), Dkt.
20	and experience,	209, p. 4.
21	training, Dr.	
22	Sadeghi-Nejad is	
23	an expert in the	
24	fields of sexual	
25	dysfunction,	
26	including but not	
27	limited to erectile	
28	dysfunction	

1	premature		
2	ejaculation; and		
3	other urological		
4	disorders.		
5	660. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
6	stated that	Report (TRO PX-9), Dkt.	
7	premature	209, p. 6.	
8	ejaculation is one		
9	of the most		
10	common male		
11	sexual disorders.		
12	661. To evaluate the	Sadeghi-Nejad Expert	
13	claims for	Report (TRO PX-9), Dkt.	
14	Prolongz, Dr.	209, p. 5, 8, 13-18 & Dkt.	
15	Sadeghi-Nejad	209-2, p. 9 to Dkt. 209-9,	
16	reviewed materials	p. 151.	
17	that had been		
18	produced by		
19	Defendants as		
20	scientific support		
21	for Prolongz and		
22	conducted a search		
23	of the scientific		
24	literature to		
25	determine whether		
26	there was other		
27	scientific support		
28	for the challenged		

1	Prolongz claims.	
2	662. Dr. Sadghi-Nejad	Sadeghi-Nejad Expert
3	stated that none of	Report (TRO PX-9), Dkt.
4	the studies he was	209, p. 8, 18.
5	provided were of a	
6	homeopathic	
7	formulation of	
8	ginseng or	
9	damiana, and that	
10	his literature search	
11	did not identify	
12	any homeopathic	
13	formulations of	
14	ginseng or damiana	
15	for ejaculatory	
16	control or	
17	premature	
18	ejaculation.	
19	663. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert
20	stated that experts	Report (TRO PX-9), Dkt.
21	in the field of	209, p. 8.
22	sexual medicine	
23	would expect	
24	claims that a	
25	product	
26	substantially	
27	increases	
28	ejaculatory control	

1	and the duration of		
2	sex, or prevents or		
3	treats premature		
4	ejaculation to be		
5	supported by well-		
6	designed,		
7	randomized,		
8	double-blind,		
9	properly controlled		
10	human clinical		
11	testing of the actual		
12	product or of a		
13	substantially		
14	similar product		
15	with the same		
16	dosage and means		
17	of administration		
18	for which the		
19	efficacy claims are		
20	made.		
21	664. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
22	stated that those	Report (TRO PX-9), Dkt.	
23	clinical trials must	209, p. 8-9.	
24	test the appropriate		
25	study population		
26	(e.g., in the case of		
27	PE, men with		
28	documented		

1	premature		
2	ejaculation), be of		
3	sufficient sample		
4	size and duration,		
5	and use reliable		
6	and validated		
7	efficacy outcome		
8	measures.		
9	665. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
10	stated that testing	Report (TRO PX-9), Dkt.	
11	of individual	209, p. 9.	
12	ingredients alone is		
13	not sufficient		
14	because ingredients		
15	may interact when		
16	combined and		
17	produce different		
18	outcomes.		
19	666. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
20	stated that testing	Report (TRO PX-9), Dkt.	
21	the same dosage of	209, p. 9.	
22	ingredients as the		
23	product at issue is		
24	necessary, because		
25	a positive effect		
26	observed at one		
27	dosage may not		
28	occur at a lower or		

1	higher dosage.	
2	667. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert
3	stated testing the	Report (TRO PX-9), Dkt.
4	same route of	209, p. 9.
5	administration as	
6	that of the product	
7	at issue is	
8	significant,	
9	because different	
10	delivery systems	
11	(e.g., oral tablet,	
12	oral film strip,	
13	topical cream) can	
14	affect the body's	
15	metabolism and	
16	absorption of the	
17	active ingredients.	
18	668. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert
19	stated that product	Report (TRO PX-9), Dkt.
20	efficacy studies	209, p. 9.
21	must be performed	
22	on human subjects	
23	because the	
24	outcomes of in	
25	vitro and animal	
26	studies cannot be	
27	extrapolated to	
28	humans.	

1	669. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert
2	stated that sexual	Report (TRO PX-9), Dkt.
3	medicine experts	209, p. 9.
4	would expect the	
5	subjects in a study	
6	assessing a	
7	product's efficacy	
8	to reflect the	
9	characteristics of	
10	the population to	
11	whom the product	
12	is targeted.	
13	670. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert
14	stated that to	Report (TRO PX-9), Dkt.
15	support a PE	209, p. 9.
16	prevention or	
17	treatment claim,	
18	experts would	
19	expect the study	
20	population to	
21	include men with	
22	documented	
23	premature	
24	ejaculation.	
25	671. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert
26	stated that	Report (TRO PX-9), Dkt.
27	to support a PE	209, p. 9-10.
28	prevention or	

1	treatment claim,		
2	there should be		
3	documentation that		
4	the study		
5	population includes		
6	men who are at		
7	least moderately		
8	bothered by their		
9	PE as measured by		
10	a validated		
11	questionnaire.		
12	672. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
13	stated a properly	Report (TRO PX-9), Dkt.	
14	designed efficacy	209, p. 10.	
15	study for a PE		
16	treatment product		
17	efficacy claims		
18	must test the		
19	treatment product		
20	against a placebo		
21	or suitable active		
22	control in order to		
23	be able to		
24	distinguish		
25	outcomes caused		
26	by the test product		
27	from those caused		
28	by other factors.		

1	673. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
2	stated that	Report (TRO PX-9), Dkt.	
3	randomized	209, p. 10.	
4	assignment of		
5	study subjects to		
6	either a treatment		
7	or control group s		
8	essential to		
9	minimize potential		
10	selection bias.		
11	674. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
12	stated that an	Report (TRO PX-9), Dkt.	
13	important aspect of	209, p. 10.	
14	a well-controlled		
15	trial is the blinding		
16	of both the study		
17	subjects and the		
18	investigators as to		
19	who has received		
20	the treatment		
21	product versus the		
22	control or		
23	reference product.		
24	675. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
25	stated that “double-	Report (TRO PX-9), Dkt.	
26	blinding” is	209, p. 10.	
27	important to		
28	minimize potential		

1	bias by both		
2	participants and the		
3	investigators		
4	conducting the		
5	study.		
6	676. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
7	stated that experts	Report (TRO PX-9), Dkt.	
8	in sexual medicine	209, p. 10-11.	
9	would expect a		
10	study assessing the		
11	efficacy of a PE		
12	product to include		
13	enough participants		
14	so the resulting		
15	data are		
16	sufficiently		
17	powered to		
18	produce		
19	statistically and		
20	clinically		
21	meaningful results.		
22	677. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
23	stated that to	Report (TRO PX-9), Dkt.	
24	account for	209, p. 11.	
25	dropouts, PE		
26	studies typically		
27	aim to recruit 100		
28	subjects, with 50		

1	randomized into		
2	the test group and		
3	50 into the control		
4	group.		
5	678. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
6	stated that studies	Report (TRO PX-9), Dkt.	
7	to assess the	209, p. 11.	
8	efficacy of a		
9	product to treat PE		
10	should incorporate		
11	the study subjects'		
12	hormonal status		
13	into sampling		
14	strategies, in order		
15	to evaluate		
16	anticipated		
17	hormonal effects of		
18	the test product.		
19	679. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
20	stated that a study	Report (TRO PX-9), Dkt.	
21	to assess the	209, p. 11.	
22	efficacy of a		
23	product to treat PE,		
24	should include at		
25	least a 3-month		
26	treatment period in		
27	order to fully		
28	evaluate the effect.		

1	680. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
2	stated that a study	Report (TRO PX-9), Dkt.	
3	to assess a	209, p. 11-12.	
4	product's efficacy		
5	to substantially		
6	increase time		
7	before ejaculation		
8	in healthy men		
9	likewise must be of		
10	sufficient duration		
11	to allow for		
12	collection of		
13	baseline data and a		
14	reasonable number		
15	of sexual attempts		
16	during the study		
17	period to assess		
18	treatment response.		
19	681. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
20	stated that studies	Report (TRO PX-9), Dkt.	
21	testing the efficacy	209, p. 12.	
22	of a product to		
23	improve		
24	ejaculatory control		
25	or to treat or		
26	prevent PE must		
27	use standardized		
28	outcome measures		

1	to assess clinical		
2	benefit.		
3	682. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
4	stated that when	Report (TRO PX-9), Dkt.	
5	evaluating the	209, p. 13.	
6	validity of the		
7	study results,		
8	experts would		
9	examine both the		
10	statistical		
11	significance and		
12	clinical relevance		
13	of the data,		
14	because a		
15	statistically		
16	significant measure		
17	does not always		
18	correspond to a		
19	clinically		
20	meaningful (real		
21	world) outcome,		
22	and vice versa.		
23	683. Dr. Sadeghi's	Sadeghi-Nejad Expert	
24	unrebutted expert	Report (TRO PX-9), Dkt.	
25	opinion is that the	209, p. 13-15, 18.	
26	study conducted		
27	for Redwood		
28	Scientific		

1	Technologies by		
2	Hilltop Research		
3	on a product called		
4	“Prolong 2” does		
5	not provide reliable		
6	scientific support		
7	that Prolongz		
8	substantially		
9	increases		
10	ejaculation control		
11	and the duration of		
12	sex, or prevents or		
13	treats premature		
14	ejaculation.		
15	684. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
16	Nejad’s unrebutted	Report (TRO PX-9), Dkt.	
17	expert opinion that	209, p. 14.	
18	the Hilltop		
19	Research study		
20	materials did not		
21	disclose the		
22	Prolong 2		
23	ingredients or		
24	dosages of the		
25	Prolong 2 product,		
26	and therefore there		
27	is no way to know		
28	whether the tested		

1	product had the		
2	same formulation		
3	as Prolongz.		
4	685. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
5	Nejad's unrebutted	Report (TRO PX-9), Dkt.	
6	expert opinion that	209, p. 14.	
7	even if the product		
8	that Hilltop		
9	Research tested did		
10	have the same		
11	formulation as		
12	Prolongz, the study		
13	fails to provide		
14	reliable scientific		
15	evidence to support		
16	efficacy claims for		
17	Prolongz because it		
18	did not adhere to		
19	accepted standards		
20	for conducting		
21	scientifically sound		
22	ejaculatory control		
23	or premature		
24	ejaculation studies.		
25	686. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
26	Nejad's unrebutted	Report (TRO PX-9), Dkt.	
27	expert opinion that	209, p. 14.	
28	the Hilltop		

1	Research study did		
2	not adhere to		
3	scientifically sound		
4	scientific standards		
5	because it did not		
6	have a randomized		
7	control group,		
8	which is necessary		
9	to eliminate		
10	potential bias by		
11	the investigators		
12	and the study		
13	subjects.		
14	687. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
15	Nejad's unrebutted	Report (TRO PX-9), Dkt.	
16	expert opinion that	209, p. 13-14, 18.	
17	the Hilltop		
18	Research study		
19	failed to adhere to		
20	scientifically sound		
21	methods because		
22	its duration was too		
23	short to properly		
24	evaluate a		
25	treatment response.		
26	688. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
27	Nejad's unrebutted	Report (TRO PX-9), Dkt.	
28	expert opinion that	209, p. 14, 18.	

1	the Hilltop		
2	Research study		
3	failed to adhere to		
4	scientifically sound		
5	methods because		
6	the number of		
7	participants was		
8	too small to draw		
9	reliable		
10	conclusions about		
11	efficacy.		
12	689. Dr. Sadeghi-	Sadeghi-Nejad Expert	
13	Nejad's unrebutted	Report (TRO PX-9), Dkt.	
14	expert opinion is	209, p. 14, 18-19.	
15	that the low		
16	number of study		
17	participants, and		
18	thus,		
19	underpowering of		
20	the Hilltop		
21	Research study,		
22	renders		
23	conclusions about		
24	statistical		
25	significance		
26	meaningless.		
27	690. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
28	Nejad's unrebutted	Report (TRO PX-9), Dkt.	

1	expert opinion that	209, p. 14-15.	
2	the inclusion		
3	criteria used in the		
4	Hilltop Research		
5	study did not		
6	adhere to		
7	standardized		
8	criteria for		
9	evaluating PE		
10	therapies because		
11	the study subjects		
12	were healthy men		
13	who had not been		
14	diagnosed with, or		
15	complained of PE.		
16	691. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
17	Nejad's unrebutted	Report (TRO PX-9), Dkt.	
18	expert opinion that	209, p. 15.	
19	the Hilltop		
20	Research study		
21	was not properly		
22	designed to assess		
23	premature		
24	ejaculation because		
25	it did not use an		
26	objective outcome		
27	measure to assess		
28	time to ejaculation		

1	and, instead, relied		
2	solely on an		
3	unvalidated		
4	questionnaire.		
5	692. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
6	Nejad's unrebutted	Report (TRO PX-9), Dkt.	
7	expert opinion that	209, p. 15, 18-19.	
8	given the study's		
9	flaws, the		
10	conclusions		
11	reached by the		
12	investigators of the		
13	Hilltop Research		
14	study cannot be		
15	replicated or		
16	accepted as		
17	scientifically valid.		
18	693. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	
19	evaluated four	Report (TRO PX-9), Dkt.	
20	human studies	209, p. 6, 16, 19.	
21	submitted by		
22	Defendants		
23	assessing the		
24	effects of Korean		
25	Red Ginseng.		
26	694. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
27	Nejad's unrebutted	Report (TRO PX-9), Dkt.	
28	expert opinion that	209, p. 6, 16, 19.	

1	those four human		
2	studies assessing		
3	the effects of		
4	Korean Red		
5	Ginseng did not		
6	provide reliable		
7	scientific support		
8	for the challenged		
9	claims for		
10	Prolongz.		
11	695. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
12	Nejad's un rebutted	Report (TRO PX-9), Dkt.	
13	expert opinion that	209, p. 16-17, 19.	
14	because the Korean		
15	Red Ginseng		
16	studies tested doses		
17	of gingseng that		
18	were at least 30		
19	times higher than		
20	the dose found in		
21	Prolongz, there is		
22	no basis for		
23	concluding that		
24	Prolongz would		
25	have the same		
26	effects as those		
27	reported in the		
28	studies.		

1	696. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
2	Nejad's rebutted	Report (TRO PX-9), Dkt.	
3	expert opinion that	209, p. 17.	
4	the Korean Red		
5	Ginseng studies do		
6	not provide reliable		
7	scientific support		
8	for the challenged		
9	Prolongz claims		
10	because the		
11	primary endpoint		
12	of those studies		
13	was the treatment		
14	of erectile		
15	dysfunction and		
16	not ejaculatory		
17	control or PE.		
18	697. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
19	Nejad's rebutted	Report (TRO PX-9), Dkt.	
20	expert opinion that	209, p. 17, 19.	
21	the Korean Red		
22	Ginseng studies do		
23	not provide reliable		
24	scientific support		
25	for the challenged		
26	Prolongz claims		
27	because the studies		
28	examined the		

1	effects of ginseng	
2	alone rather than a	
3	combination of	
4	ginseng and	
5	damiana, the active	
6	ingredients in	
7	Prolongz.	
8	698. It is Dr. Sadeghi-	Sadeghi-Nejad Expert
9	Nejad's unrebutted	Report (TRO PX-9), Dkt.
10	expert opinion that	209, p. 17.
11	experts in the field	
12	of sexual medicine	
13	would require	
14	human testing of	
15	the actual Prolongz	
16	formulation, so	
17	studies examining	
18	the effectiveness of	
19	ginseng extract and	
20	damiana extract	
21	individually would	
22	not constitute	
23	adequate support	
24	for the Prolongz	
25	ejaculation efficacy	
26	claims.	
27	699. It is Dr. Sadeghi-	Sadeghi-Nejad Expert
28	Nejad's unrebutted	Report (TRO PX-9), Dkt.

1	expert opinion that	209, p. 17, 19.	
2	the results of a		
3	study submitted by		
4	Defendants of a		
5	nine-ingredient		
6	topical anesthetic		
7	cream cannot be		
8	extrapolated to		
9	Prolongz because		
10	of significant		
11	differences in both		
12	formulation and		
13	route of		
14	administration.		
15	700. It is Dr. Sadeghi-	Sadeghi-Nejad Expert	
16	Nejad's un rebutted	Report (TRO PX-9), Dkt.	
17	expert opinion that	209, p. 16-17.	
18	four rodent studies		
19	submitted by		
20	Defendants do not		
21	provide reliable		
22	scientific support		
23	for the challenged		
24	Prolongz claims		
25	because the results		
26	of animal studies		
27	cannot be		
28	extrapolated to		

1	effects in humans.	
2	701. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert
3	also stated that the	Report (TRO PX-9), Dkt.
4	four rodent studies	209, p. 17.
5	do not provide	
6	reliable scientific	
7	support for the	
8	challenged	
9	Prolongz claims	
10	because none	
11	found	
12	improvements in	
13	premature	
14	ejaculation or	
15	ejaculatory control.	
16	702. It is Dr. Sadeghi-	Sadeghi-Nejad Expert
17	Nejad's unrebutted	Report (TRO PX-9), Dkt.
18	expert opinion that	209, p. 18.
19	review articles	
20	submitted by	
21	Defendants do not	
22	provide reliable	
23	scientific support	
24	for the challenged	
25	Prolongz claims	
26	because they do	
27	not meet accepted	
28	scientific standards	

1	for clinical trials.	
2	703. It is Dr. Sadeghi-	Sadeghi-Nejad Expert
3	Nejad's un rebutted	Report (TRO PX-9), Dkt.
4	expert opinion that	209, p. 18.
5	his own search of	
6	the medical	
7	literature did not	
8	reveal any	
9	scientific evidence	
10	to support the	
11	conclusion that the	
12	combination of	
13	ingredients in	
14	Prolongz increases	
15	ejaculatory control	
16	time or treats or	
17	prevents PE.	
18	704. Based on his	Sadeghi-Nejad Expert
19	knowledge,	Report (TRO PX-9), Dkt.
20	experience, and	209, p. 6, 19.
21	training, it is Dr.	
22	Sadeghi-Nejad's	
23	un rebutted expert	
24	opinion that there	
25	was no reliable	
26	scientific evidence	
27	that Prolongz	
28	substantially	

1	increases		
2	ejaculatory control		
3	or the duration of		
4	sex (time to		
5	ejaculation).		
6	705. Based on his	Sadeghi-Nejad Expert	
7	knowledge,	Report (TRO PX-9), Dkt.	
8	experience, and	209, p. 6, 19.	
9	training, it is Dr.		
10	Sadeghi-Nejad's		
11	unrebutted expert		
12	opinion that there		
13	was no reliable		
14	scientific evidence		
15	that Prolongz		
16	prevents or treats		
17	premature		
18	ejaculation.		
19	706. The Cardiffs did	Sanger Dec. (PX-52), p.	
20	not submit any	3, ¶ 18.	
21	expert report		
22	disagreeing with		
23	Dr. Sadeghi-		
24	Nejad's		
25	conclusions about		
26	Prolongz or		
27	supporting the		
28	Prolongz claims		

1	challenged in this		
2	proceeding.		

3 **FTC Response to SUF 649-706:** The Cardiffs do not dispute any of the
4 foregoing facts concerning Dr. Sadeghi-Nejad's explanation of the standards that
5 experts in sexual performance would use to determine whether claims for a
6 sexual performance product are substantiated, or his evaluation of the challenged
7 claims made for Prolongz using those standards.

8
9 Dr. Sadeghi-Nejad's expert report is relevant and helpful to the Court. He was
10 asked to opine, as an expert in sexual performance, on whether the claims
11 challenged in the Commission's complaint were substantiated. That is exactly
12 what he did, setting forth first the standards that experts in the field would use to
13 answer that question and then examining the relevant scientific evidence.

14
15 Jason Cardiff's characterization of the findings of any scientific study is
16 inadmissible under FRE 701 because he is providing testimony based on
17 "scientific, technical, or other specialized knowledge within the scope of FRE
18 702," but has not been qualified as an expert. Dkt. 490, p. 15-18.

19
20 The timeframe is the period when Defendants marketed and sold Prolongz
21 (2013-2018, see SUF 604), and these facts are relevant to the Cardiffs' individual
22 liability for injunctive and monetary relief.

23
24 *D. Defendants' Claims That Prolongz Was Proven To Be Effective Were*
25 *False*

26	FTC Fact	FTC Citation	Cardiff
27			Admit/Objection
28	707. None of the	Sadeghi-Nejad Expert	Objection irrelevant and

1	substantiation	Report (TRO PX-9), Dkt.	lacks timeframe.
2	materials submitted	209, p. 17.	Defendants stopped
3	by Defendants		marketing and changed
4	included a study of		the claims that were
5	Prolongz or any		made on their websites in
6	product with the		or about February, 2018.
7	same formulation		Ex. A, Jason Cardiff
8	of ginseng and		Declaration ¶¶7, 9, and
9	damiana in an oral		46-53.
10	film strip for		Red Ginseng has a
11	improved		“significant” effect on
12	ejaculatory control		erectile dysfunction.
13	or PE. 16		2008 study in US
14	708. Dr. Sadeghi-Nejad	Sadeghi-Nejad Expert	National Library of
15	found no published	Report (TRO PX-9), Dkt.	Medicine, National
16	reports of human	209, p. 18 (“My literature	Institutes of Health. Ex.
17	clinical studies of a	search did not reveal any	A, Declaration of Jason
18	product with the	scientific evidence to	Cardiff. ¶23.
19	same formulation	support that the	In a study of 80 people,
20	of ginseng and	combination of	40 of who were on
21	damiana and route	ingredients in Prolongz	placebo and 40 of who
22	of administration	increases ejaculatory	took Red Ginseng, all

¹⁶ The Cardiffs submitted a single objection to SUF 649-708. However, to be consistent with the Commission’s original organization, this Response groups SUF 707-708 together, rather than with SUF 649-706.

1	as Prolongz in	control time or treats or	patients increased their
2	which the product	prevents PE.’’).	unit of measure in
3	increased		Clinical Trial. Ex. A,
4	ejaculatory control		Declaration of Jason
5	and the duration of		Cardiff. ¶24.
6	sex.		Red Ginseng increases
7			the production of Nitric
8			Oxide which leads to
9			improved erectile
10			function and vascular
11			endothelial function. Ex.
12			A, Declaration of Jason
13			Cardiff. ¶25.
14			Dr. Sadeghi-Nejad was
15			not provided accurate
16			information about the
17			modified product claims
18			made for Eupepsia Thin
19			[sic] and. Accordingly,
20			his opinions should be
21			excluded under the
22			Daubert test. <i>Daubert v.</i>
23			<i>Merrell Dow Pharms.,</i>
24			<i>Inc.</i> , 509 U.S. 579, 589,
25			() ; <i>FTC v. Qualcomm</i>
26			<i>Inc.</i> , 2018 U.S. Dist.
27			LEXIS 208197, *9, 2018
28			WL 6460573.

FTC Response to SUF 707-708: The Cardiffs do not dispute Dr. Sadeghi-Nejad’s assertions (1) that none of the substantiation materials submitted by Defendants included a study of Prolongz or any product with the same formulation of ginseng and damiana in an oral film strip for improved ejaculatory control or premature ejaculation, and (2) that he found no published reports of human clinical studies with the same formulation and route of administration as Prolongz in which the product increased ejaculatory control and the duration of sex.

Dr. Sadeghi-Nejad’s expert report is relevant and helpful to the Court. Dr. Sadeghi-Nejad was asked to opine, as an expert in expert in the fields of sexual dysfunction, including but not limited to erectile dysfunction premature ejaculation; and other urological disorders, on whether the Prolongz claims challenged in the Commission’s complaint were substantiated. That is exactly what he did, setting forth first the standards that experts in the field would use to answer that question with respect to a product claimed to improve sexual performance and then examining the relevant scientific evidence.

The Cardiffs’ extraneous narrative should be disregarded.

The Cardiffs’ boilerplate “timeframe” objection is inapposite because the facts deal with the complete absence of any clinical study of Prolongz or any product with the same formulation of ginseng and damiana in an oral film strip for improved ejaculatory control or premature ejaculation.

These facts are relevant to Defendants’ liability for injunctive and monetary relief.

709. [reserved]		
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710. [reserved]		
711. [reserved]		

VI. False Made in USA Claim for Eupepsia Thin

FTC Fact	FTC Citation	Cardiff Admit/Ojection
712. The Eupepsia Thin package purchased by the FTC's undercover investigator showed a circular seal with an American flag encircled by the words "Made in USA."	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 15 & Dkt. 10, p. 63 (Att. 027). Walker Dec. (PX-32), p. 11, ¶ 48 & p. 620-621 (Att. 67).	Deny. Ex. A, Jason Cardiff Declaration ¶¶81-83.
713. The Eupepsia Thin package produced in response to the Commission's CID displayed the same seal.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 16 & Dkt. 10, p. 65 (Att. 028).	

FTC Response to SUF 712-713: Although the Cardiffs purport to deny SUF 712 and 713, the cited Paragraphs 81-83 of Jason Cardiff's Declaration do not address whether the Eupepsia Thin packages purchased by the FTC's investigator and the package produced by Redwood in response to the Commission's CID displayed a circular seal with an American flag encircled by the words "Made in USA." Accordingly, their denial does not actually create a

genuine dispute of material fact.

714. Defendants’ bethinrx.com website displayed the same seal.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 49 (Att. 026). Walker Dec. (PX-32), p. 9, ¶ 37 & p. 547-560 (Att. 49).	Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018.
715. The Eupepsia Thin page on the Redwood America website, redwoodamerica.com, displayed the same seal.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 17 & Dkt. 10, p. 67 (Att. 029). Walker Dec. (PX-32), p. 9, ¶ 37 & p. 591-592 (Att. 58).	Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶7, 9, and 46-53. . Deny. Ex. A, Jason Cardiff Declaration ¶¶81-83.
716. Defendants’ controltheweight.com website displays the same seal and also says that “RST’s newest product, Eupepsia Thin, is made in the USA. . . .”	Sands 3rd Dec. (PX-51), p. 5, ¶ 18 & p. 187, 190, 193 (Att.76). Walker Dec. (PX-32), p. 9, ¶ 37 & p. 561-563 (Att. 50).	

FTC Response to SUF 714-716: The Cardiffs do not dispute that the seal appeared on their Redwood America, bethinrx.com, and controltheweight.com websites.

Moreover, Defendants did not stop marketing Eupepsia Thin using that seal in February 2018. The seal was still prominent on the Redwood America website as of March 28, 2018 (Dkt. 7, p. 6, ¶ 17 & Dkt. 10, p. 67 (Att. 029)) and on the controltheweight.com website as of August 9, 2018. SUF 940.

The timeframe is when the Defendants marketed Eupepsia Thin (2017-2018, Dkt. 1) and these facts are relevant to the Cardiffs' individual liability for injunctive and monetary relief.

717. Defendants claimed that Eupepsia Thin was made in the United States.	SUF 712-716.	Deny. Ex. A, Jason Cardiff Declaration ¶¶81-83.
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FTC Response to SUF 717: The Cardiffs' denial of FTC SUF 717 does not create a genuine dispute of material fact, because Paragraphs 81-83 of Jason Cardiffs' Declaration do not dispute that Defendants' claimed Eupepsia Thin was made in the United States.

718. Eupepsia Thin oral film strips were made in China and India.	Walker Dec. (PX-32), p. 11, ¶¶ 47, 49-50 & p. 622 (Att. 68); p. 640 (Att. 73); p. 641-643 (Atts. 74-76). See also Wu Dec. (PX-37), p. 2, ¶ 12 (in late 2016, Redwood's sole supplier of Prolongz and TBX-FREE was the	Admit insofar as it does not admit that the entire process of manufacturing Eupepsia Thin met the requirements for "Made in the USA" prior to 2017. Ex. A, Declaration of Jason Cardiff ¶¶81-83.
---	--	--

1		Chinese company	
2		Dalian).	
3	719. Jason Cardiff and	J. Cardiff 3rd RFA Resp.,	
4	Eunjung Cardiff	p. 19,	
5	admit that	¶ 211 (Sanger Dec. (PX-	
6	Eupepsia Thin oral	52), p. 1, p. 6 & p. 42	
7	film strips were not	(Att. 3)).	
8	made in the United		
9	States.	E. Cardiff 3rd RFA	
10		Resp., p. 16,	
11		¶ 205 (Sanger Dec. (PX-	
12		52), p. 2, ¶ 10 & p. 71	
13		(Att. 7)).	
14			
15		See also Walker Dec.	
16		(PX-32), p. 11, ¶ 47	
17		(“TBX-FREE, Eupepsia	
18		Thin, and Prolongz were	
19		made in China and	
20		India”).	
21			
22		Sands 1st Dec. (TRO PX-	
23		1), Dkt. 7, p. 9-10, ¶¶ 23-	
24		27 & Dkt. 10, p. 80-89	
25		(Atts. 033-037).	
26	720. Jason Cardiff	J. Cardiff 3rd RFA Resp.,	
27	admits that he	p. 20,	
28	knew that Eupepsia	¶ 213 (Sanger Dec. (PX-	

Thin oral film strips were not made in the United States.	52), p. 1, ¶ 6 & p. 43 (Att. 3)). See also Walker Dec, p. 11, ¶ 49 (Jason Cardiff communicated with the manufacturers).	
721. Eunjung Cardiff admits that she knew that the Eupepsia Thin oral film strips were imported from India and China.	E. Cardiff 3rd RFA Resp., p. 17, ¶ 208 (Sanger Dec. (PX-52), p. 2, ¶ 10 & 92 (Att. 7)). See also Walker Dec. (PX-32), p. 11, ¶ 50 (Eunjung Cardiff authorized payment of the manufacturers' invoices).	
FTC Response to SUF 718-721: The Cardiffs have previously admitted these facts and do so again. Their additional narrative should be disregarded as argument.		
722. [reserved]		
723. [reserved]		
724. [reserved]		

VII. False and Misleading Money Back Guarantee Claims

FTC Fact	FTC Citation	Cardiff Admit/Objection
<p>725. Jason Cardiff stated in a January 9, 2017 Facebook advertisement for TBX-FREE “what have you got to lose? I mean, we have a lifetime, money-back guarantee on this product. We’re going to give you, you know, your money back. We’re going to cover the shipping.”</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 4, ¶ 7 & Dkt. 7, p. 248, ln. 19-23 (Att. 010).</p>	<p>Objection irrelevant and lacks timeframe. Defendants stopped marketing and changed the claims that were made on their websites in or about February, 2018. Ex. A, Jason Cardiff Declaration ¶¶7, 9, and 46-53. Defendants did offer a money-back guarantee and over 16,000 people received refunds from Redwood. Dkt. 7 at 155-165.</p>
<p>726. Jason Cardiff stated in a February 7, 2017 Facebook advertisement for TBX-FREE that “We have a lifetime money-back guarantee. So</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 4, ¶ 8 & Dkt. 7, p. 263, ln. 11-21 (Att. 013).</p>	

1	for any reason if it		
2	doesn't work, you		
3	don't even need to		
4	ship it back. . . .		
5	And if you have a		
6	problem . . . or it		
7	doesn't work or		
8	you want your		
9	money back, I		
10	mean it's possible.		
11	You call . . . we		
12	don't even ask you		
13	to send the product		
14	back."		
15	727. Jason Cardiff also	Sands 1st Dec. (TRO PX-	
16	stated in the	1), Dkt. 7, p. 4, ¶ 8 &	
17	February 7, 2017	Dkt. 7, p. 264, ln. 25 – p.	
18	Facebook	265, ln. 1 (Att. 013).	
19	advertisement for		
20	TBX-FREE that		
21	"We want to give		
22	you your money		
23	back if you're not		
24	satisfied."		
25	728. Jason Cardiff	Sands 1st Dec. (TRO PX-	
26	stated in a	1), Dkt. 7, p. 4, ¶ 9 &	
27	February 24, 2017	Dkt. 7, p. 278, ln. 11-17	
28	Facebook ad for	(Att. 016).	

1 TBX-FREE, “We
2 offer a lifetime,
3 money-back
4 guarantee. So
5 TBX-FREE says,
6 wait a minute, wait
7 a minute.
8 Lifetime, money-
9 back guarantee for
10 any reason, okay?
11 If the product
12 doesn’t work for
13 you or you become
14 a smoker again, not
15 only will we either
16 give you your
17 money back or
18 we’ll send you
19 another box,
20 whatever you
21 want.”

22 **FTC Response to SUF 725-728:** The Cardiffs do not dispute that Jason Cardiff,
23 in Facebook Live videos, promised TBX-FREE customers that they could get
24 their money back if they were dissatisfied with their order under Redwood’s
25 lifetime money back guarantee.

26
27 The Defendants’ boilerplate “lacks timeframe” objection is inapposite when FTC
28 SUF 725-728 clearly state the dates on which those Facebook advertisements

were posted. Furthermore, the January 9, 2017, February 7, 2018, and February 24, 2017 Facebook videos were all still live on September 18, 2018, when they were captured by the FTC’s investigator. Dkt. 7, p. 254, 267, 282 (Att. 011, 014, 017).

These facts are relevant to proving that Defendants promised consumers money back guarantees and to Jason Cardiff’s individual liability for injunctive and monetary relief.

Their additional narrative is argument and does not address these facts.

729. A Redwood sales representative asked an FTC investigator making an undercover telephone call if he was “most definitely sure you want to only get the one-box supply? We do have a money-back guarantee for all options.”	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 13, ¶ 33 & Dkt. 10, p. 158, ln. 12-14 (Att. 069).	Admit.
730. A Redwood sales representative told another FTC	Farrell Dec. (TRO PX-5), Dkt. 11, p. 2, ¶ 4 & p. 11, ln. 25 – p. 12, ln. 9 (Att.	Defendants did offer a money-back guarantee and over 16,000 people

¹⁷ The Cardiffs submitted a single objection to SUF 730-739; the FTC's response begins on p. 424.

1	TBX-FREE was	See Walker Dec. (PX-	
2	sold with a money-	32), p. 14, ¶ 61	
3	back guarantee.	(Redwood initially	
4		advertised a lifetime	
5		guarantee for TBX-	
6		FREE).	
7			
8		See also Sands 3rd Dec.	
9		(PX-51), p. 3, ¶ 9 & p. 37	
10		(Att. 2).	
11	732. Defendants’	Sands 3rd Dec. (PX-51),	
12	television ads for	p. 9-11, ¶ 37 & p. 564,	
13	Eupepsia Thin	589, ln. 2-9; see also p.	
14	included the	593, ln. 12-15 (on-screen	
15	following:	graphic: “MONEY	
16	“ON SCREEN:	BACK GUARANTEE	
17	Eupepsia product	LIFETIME”); p. 622, ln.	
18	box and strip	13-19 (“And don’t forget,	
19	container	we’re so confident	
20	MONEY BACK	Eupepsia will work for	
21	GUARANTEE	you, it comes with a	
22	LIFETIME	lifetime guarantee”; on	
23	1-800-5551212	screen graphic:	
24	thinliferx.com	“MONEY BACK	
25	“Spokeswoman:	GUARANTEE	
26	We are so	LIFETIME”) (Att. 92).	
27	confident that		
28	Eupepsia will work	Sands 3rd Dec. (PX-51),	

1 for you, it comes
2 with a lifetime
3 guarantee.

p. 9-11, ¶ 37 & p. 632,
658, ln. 10-17; see also p.
663, ln. 4-7 (on-screen
graphic: “MONEY
BACK GUARANTEE
LIFETIME”); p. 692, ln.
24 – p. 693, ln. 5 (“And
don’t forget, we’re so
confident Eupepsia will
work for you, it comes
with a lifetime
guarantee”; on screen
graphic: “MONEY
BACK GUARANTEE
LIFETIME”) (Att. 93).

Sands 3rd Dec. (PX-51),
p. 9-11, ¶ 37 & p. 704,
730, ln. 11-18; see also p.
735, ln. 6-9 (on-screen
graphic: “MONEY
BACK GUARANTEE
LIFETIME”), p. 764, ln.
25 – p. 765, ln. 6 (“And
don’t forget, we’re so
confident Eupepsia will
work for you, it comes
with a lifetime

	<p>guarantee”; on screen graphic: “MONEY BACK GUARANTEE LIFETIME”) (Att. 94).</p> <p>Sands 3rd Dec. (PX-51), p. 9-11, ¶ 37 & p. 775, 800, ln. 4-11; see also p. 804, ln. 14-17 (on-screen graphic: “MONEY BACK GUARANTEE LIFETIME”); p. 833, ln. 10-16 (same on-screen graphic; “And don’t forget, we’re so confident Eupepsia will work for you, it comes with a lifetime guarantee”; on screen graphic: “MONEY BACK GUARANTEE LIFETIME”) (Att. 95).</p>	
<p>733. Eupepsia Thin advertising represented that the product was sold with a “lifetime” money-back</p>	<p>SUF 732.</p> <p>Walker Dec. (PX-32), p. 14, ¶ 6 (Eupepsia Thin was launched with a lifetime guarantee but</p>	

1	guarantee.	that was changed to 30
2		days after many customer
3		complaints).
4	734. Defendants’	Sands 3rd Dec. (PX-51),
5	television ads for	p. 9-11, ¶ 37 & p. 861,
6	Prolongz included	870 ln. 24 – p. 871, ln. 2;
7	the following	p. 871, ln. 9-12; p. 872,
8	onscreen text:	ln. 11-14; p. 879, ln. 15-
9	“ON SCREEN: 30	18; p. 880, ln. 4-7; p.
10	DAY SUPPLY,	881, ln. 7-10; p. 888, ln.
11	100% Guaranteed,	18-21; p. 890, ln. 5-8; p.
12	FULL 30 DAY	897, ln. 10-13; p. 898, ln.
13	MONEY BACK	23 – p. 899, ln. 1; p. 909,
14	GUARANTEE!”	ln. 2-5; p. 910, ln. 14-17
15		(Att. 98).
16		
17		Sands 3rd Dec. (PX-51),
18		p. 9-11, ¶ 37 & p. 914,
19		923, ln. 11-14; p. 923, ln.
20		24 – p. 924, ln. 2; p. 925,
21		ln. 1-4; p. 931, ln. 13-15;
22		p. 932, ln. 2-5; p. 932, ln.
23		15-18; p. 933, ln. 17-20;
24		p. 941, ln. 5-8; p. 941, ln.
25		18-21; p. 942, ln. 20-23;
26		p. 949, ln. 22-25; p. 950,
27		ln. 11-14; p. 951, ln. 13-
28		16; p. 961, ln. 9-12; p.

	<p>961, ln. 23 – p. 962, ln. 1; p. 963, ln. 1-4 (Att. 99).</p> <p>Sands 3rd Dec. (PX-51), p. 11-12, ¶ 40 & p. 1635, 1639, ln. 10-11; p. 1640, ln. 14-15 (Att. 121).</p>	
<p>735. Defendants’ website, www.prolongz.com, contained the following statements:</p> <p>“Guaranteed to work or your money back”;</p> <p>“30 DAY MONEY BACK GUARANTEE!”;</p> <p>and</p> <p>“100% Satisfaction Guaranteed or Your Money Back.”</p>	<p>Morris Dec. (TRO PX-4), Dkt. 9, p. 2, ¶ 4 & p. 4, 5, 6, 8, 10 (Att. A).</p> <p>Walker Dec. (PX-32), p. 9, ¶ 37 & p. 582-588 (Att. 56) (see p. 584 for “30 DAY MONEY BACK GUARANTEE!”; see p. 586 for “100% Satisfaction Guaranteed or Your Money Back”).</p>	
<p>736. Prolongz advertising represented that the product was sold</p>	<p>SUF 734-735.</p>	

1	with a money-back		
2	guarantee.		
3	737. Defendants' return	Sands 1st Dec. (TRO PX-	
4	policies for TBX-	1), Dkt. 7, p. 15, ¶ 41 &	
5	FREE and	Dkt. 10, p. 205-206 (Att.	
6	Eupepsia Thin	77) (TBX-FREE).	
7	always required		
8	customers first to	Sands 1st Dec. (TRO PX-	
9	call customer	1), Dkt. 7, p. 6, ¶ 14 &	
10	service to obtain a	Dkt. 10, p. 55, 62 (Att.	
11	Return	026) (Eupepsia Thin).	
12	Merchandise		
13	Authorization	See also Sands 1st Dec.	
14	(RMA) code and to	(TRO PX-1), Dkt. 7, p.	
15	send back unused	15, ¶ 40 & Dkt. 10, p.	
16	product at their	194, 199 (Att. 076) (FTC	
17	own expense.	investigator was given	
18		RMA numbers to return	
19		one authorized and one	
20		unauthorized shipment of	
21		TBX-FREE).	
22			
23		Walker Dec. (PX-32), p.	
24		16, ¶ 71.	
25			
26		Melendez Dec. (PX-35),	
27		p. 8, ¶ 29.	
28			

	<p>See also Carranza Dec. (PX-33), p. 4, ¶ 16.</p> <p>Rodoracio Dec. (PX-36), p. 3-4, ¶ 15.</p>	
<p>738. Although Redwood started selling TBX-FREE and Eupepsia Thin with advertised lifetime moneyback guarantees, Redwood’s actual return policy was limited to 30 days.</p>	<p>Walker Dec. (PX-32), p. 14, ¶ 61 (advertising was lifetime guarantee but terms and conditions were that purchases could only be returned within 30 days of initial order); p. 16, ¶ 71.</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 6, ¶ 14 & Dkt. 10, p. 49, 62 (Att. 26) (“DO NOT send an order back that is passed the 30 day return policy.”) .</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 15, ¶ 41 & Dkt. 10, p. 205, 206 (Att. 077) (“We will not receive an order back</p>	

	<p>once it's passed 30 days' satisfaction guarantee.'').</p> <p>See also Carranza Dec. (PX-33), p. 4, ¶ 16 (Redwood usually had to receive the returned merchandise within 30 days of the date on which the customer placed the order).</p> <p>See also Melendez Dec. (PX-35), p. 7, ¶ 27 (guarantee was sometimes advertised as lifetime and sometimes as 30 days).</p>	
<p>739. Defendants counted the 30-day period from the date the consumer placed the order, not from when the consumer received and started using the product, even if temporary product</p>	<p>Walker Dec. (PX-32), p. 14, ¶ 61 (terms and conditions were that returns had to be within 30 days of order; p. 16, ¶ 71 (product shortages sometimes made it hard to get shipments to consumers right away, which resulted in them</p>	

1	shortages delayed	not being able to take	
2	the consumer's	advantage of the money-	
3	receipt of the	back guarantee).	
4	product.		
5		Sands 1st Dec. (TRO PX-	
6		1), Dkt. 7, p. 15, ¶ 41 &	
7		Dkt. 10, p. 205, 206	
8		("Orders sent back after	
9		the 30 [sic] day from the	
10		order will not be process	
11		[sic] for refund credit.")	
12		(Att. 077).	
13			
14		See also, e.g., DeAngelo	
15		Dec. (TRO PX-18), Dkt.	
16		211, p. 15, ¶¶ 2-3	
17		(consumer who ordered	
18		3-month supply of	
19		Eupepsia Thin after	
20		seeing ad promising	
21		lifetime money-back	
22		guarantee was told he	
23		was not eligible for	
24		refund because 30 days	
25		had passed since he	
26		placed his order).	
27			
28		Roberts Dec. (TRO PX-	

1		23), Dkt. 211, p. 25, ¶ 6	
2		(customer service said	
3		refund request was too	
4		late because more than	
5		30 days from date of	
6		initial order, even though	
7		product did not arrive for	
8		more than two weeks).	
9			
10		See Melendez Dec. (PX-	
11		35), p. 7, ¶ 27 (when she	
12		told Jason Cardiff that	
13		customers wanted money	
14		back more than 30 days	
15		after initial order, he told	
16		her to deny those	
17		refunds).	
18	FTC Response to SUF 730-739: Defendants admit that they offered money-		
19	back guarantees. They do not dispute that they marketed the challenged products		
20	by offering various money-back guarantees. They also do not dispute that		
21	customers who requested their money back were required to satisfy a number of		
22	conditions before they could receive a refund, or that the lifetime money-back		
23	guarantee was only honored for 30 days, which began running from the date of		
24	sale. The remainder of the response is narrative and not responsive. For example,		
25	Defendants' response that "Redwood never took money directly from consumer		
26	bank accounts. Redwood only took credit cards and debit cards" (Dkt. 491-3 at		
27	36, ¶ 112) is not responsive to any of the corresponding undisputed facts.		
28	740. Many customers	Walker Dec. (PX-32), 14,	Object hearsay. Any

1	did not realize that	¶ 61; p. 16, ¶ 71 (lifetime	customer testimony
2	they would have	guarantee created a lot of	through Danielle Walker
3	only 30 days from	confusion in call center	is hearsay.
4	when they placed	and with customers); p.	Defendants did offer a
5	their order to try	16, ¶ 71.	money-back guarantee
6	the product.		and over 16,000 people
7			received refunds from
8			Redwood. Dkt. 7 at 155-
9			165.
10			Redwood was very
11			flexible with its Refund
12			policy, and would often
13			refund money to people
14			after the 30 days had
15			passed. Exhibit A,
16			Declaration of Jason
17			Cardiff ¶111.
18	FTC Response to SUF 740: Defendants do not dispute that customers did not		
19	realize they would have only 30 from placing their orders to try Redwood		
20	products. Jason Cardiff's sworn statement regarding flexibility exercised in		
21	granting refunds (Cardiff ¶ 11) does not address this undisputed fact and is		
22	therefore not relevant.		
23	741. The Customer	Walker Depo., p. 64, ln.	Deny, the customer
24	Service Manager	16-23 (Sands 3rd Dec.	service manager was not
25	was allowed to	(PX-51), p. 6, ¶ 27 & p.	aware of any cap on
26	authorize refunds	1672, 1677 (Att. 124)).	refunds. Jason Cardiff's
27	only up to a certain		policy for refunds was
28	level.	Melendez Dec. (PX-35),	that refunds could not

	p. 7, ¶ 28 (Jason Cardiff imposed a daily limit on refunds in 2017).	exceed revenues for the day, and if they did exceed revenues, they
742. Jason Cardiff had final decision-making authority when consumers requested refunds above that level.	Walker Depo., p. 64, ln. 24 – p. 65, ln. 2 (Sands 3rd Dec. (PX-51), p. 6, ¶ 27 & p. 1672, 1677-1678 (Att. 124)).	were pushed over to the next day. Ex. A, Declaration of Jason Cardiff ¶110. Defendants did offer a money-back guarantee and over 16,000 people received refunds from Redwood. Dkt. 7 at 155-165. Redwood was very flexible with its Refund policy, and would often refund money to people after the 30 days had passed. Exhibit A, Declaration of Jason Cardiff ¶111.
<p>FTC Response to SUF 741-742: While Defendants’ formally “deny” these statements of undisputed fact, they do not dispute that the Customer Service Manager was allowed to authorize refunds up to a certain level and that Jason Cardiff had final decisionmaking authority. The cited Jason Cardiff declaration admits that there was a cap on daily refunds (¶ 110) and admits that “Danielle Walker and myself would approve these refunds” without denying that Jason Cardiff had the final decisionmaking authority. The assertion that “the customer</p>		

service manager was not aware of any cap on refunds” is purely argument and speculative at best because it is not based on any evidence or sworn statement.

743. In many cases, Redwood would deny full refunds if most of the product had been used or a Return Merchandise Authorization had not been obtained.	Walker Dec. (PX-32), p. 16, ¶ 71. Walker Depo., p. 63, ln. 11-19 (Sands 3rd Dec. (PX-51), p. 6, ¶ 27 & p. 1672, 1676 (Att. 124)). Rodoracio Dec. (PX-36), p. 3-4, ¶ 15 (customers had little chance of getting a refund if they had used all the product or had not gotten an RMA).	Defendants did offer a money-back guarantee and over 16,000 people received refunds from Redwood. Dkt. 7 at 155-165. Redwood was very flexible with its Refund policy, and would often refund money to people after the 30 days had passed. Exhibit A, Declaration of Jason Cardiff ¶111.
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FTC Response to SUF 743: Defendants do not dispute that in many cases Redwood denied customers requested refunds because most of the products had been used or the customer failed to obtain an RMA. The declaration of Jason Cardiff makes a general assertion about the 30-day refund policy without addressing the FTC’s undisputed fact or giving any detailed description regarding when, and under what circumstances, refunds were given after 30 days had passed.

744. Defendants for a while offered Prolongz and TBX-FREE on a	Walker Dec. (PX-32), p. 16, ¶ 72. Carranza Dec. (PX-33),	Admit. Redwood was very flexible with its Refund policy, and would often refund
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15-day free trial basis in which customers gave their credit or debit card numbers to pay for shipping.	p. 4-5, ¶ 17. Rodoracio Dec. (PX-36), p. 4, ¶ 16.	money to people after the 30 days had passed. Exhibit A, Declaration of Jason Cardiff at ¶111.
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FTC Response to SUF 744: Defendants admit and do not dispute that they offered a 15-day free trial. The remaining narrative is not responsive to the undisputed fact.

745. These free-trial customers would then be charged for a 30-day supply on a monthly auto-ship program at the end of the 15-day period, even if they had not received the product for 7 to 10 business days after placing their order, and thus had only tried it for a few days.	Walker Dec. (PX-32), p. 16-17, ¶ 72. Rodoracio Dec. (PX-36), p. 4, ¶ 16. See also Carranza Dec. (PX-33), p. 4-5, ¶ 17.	Defendants did offer a money-back guarantee and over 16,000 people received refunds from Redwood. Dkt. 7 at 155-165. Deny, Redwood was very flexible with its Refund policy, and would often refund money to people after the 30 days had passed. Exhibit A, Declaration of Jason Cardiff at ¶111.
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FTC Response to SUF 745: Defendants do not dispute that free-trial customers would be charged for a 30-day auto-ship supply after the expiration of the 15-day trial even if they did not receive their free-trial until a few days prior to the expiration of the trial period. The cited Cardiff declaration (¶ 11) only states that

Redwood was “very flexible with its refund policy.” Also, whether or not 16,000 customers received refunds does not address this undisputed fact.

746. Many consumers who only had a couple of days before their credit or debit cards were automatically charged for a 30-day supply complained or sought chargebacks.	Rodoracio Dec. (PX-36), p. 4, ¶ 16.	Deny. The FTC has no direct evidence of customers complaining about this. Object as to the word “many.” Redwood had over 200,000 customers so the word “many” is relative. Defendants did offer a money-back guarantee and over 16,000 people
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747. Many customers who sought refunds were told that the charges were not refundable, or that they failed to comply with applicable cancellation and refund policies.	DeAngelo Dec. (TRO PX-18), Dkt. 211, p. 16, ¶¶ 2-3 (consumer who ordered 3-month supply of Eupepsia Thin after seeing ad promising lifetime money-back guarantee was not eligible for refund because 30 days had passed since order had been placed).	received refunds from Redwood. Dkt. 7 at 155-165. Redwood was very flexible with its Refund policy, and would often refund money to people after the 30 days had passed. Exhibit A, Declaration of Jason Cardiff ¶111.
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	Roberts Dec. (TRO PX-23), Dkt. 211, p. 25, ¶ 6	
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(customer service said refund request was too late because more than 30 days from date of initial order).

See also Bryant Dec. (TRO PX-16), Dkt. 211, p. 12-13, ¶¶ 5-7 (consumer unable to get refund for the TBX-FREE ordered as free trial, for which she was charged \$42.71.

See also Kramer Dec. (TRO PX-19), Dkt. 211, p. 18, ¶¶ 2-4 (consumer unable to get refund for \$90 “End of Trial Fee” charged 30 days after placing order for 30-day free trial).

See also Grossman Dec. (TRO PX-20), Dkt. 211, p. 20-21, ¶¶ 3-5 (Redwood charged

1 \$89.95 days after
2 customer ordered and
3 then cancelled 15-day
4 free trial, and would not
5 refund).

6
7 Carranza Dec. (PX-33),
8 p. 4, ¶ 16 (customers
9 complained about how
10 strictly Redwood
11 enforced its money-back
12 guarantees).

13
14 See also Rodoracio Dec.
15 (PX-36), p. 3-4, ¶ 15
16 (customer service
17 received calls from
18 customers who believed
19 they were entitled to
20 refunds because money-
21 back guarantee in
22 advertising was open-
23 ended).

24 **FTC Response to SUF 746-747:** Defendants do not dispute that Redwood
25 customers who only had a couple of days before their credit or debit cards were
26 automatically charged for a 30-day supply complained or sought chargebacks, or
27 that customers who sought refunds were told that the charges were not
28 refundable, or that they failed to comply with applicable cancellation and refund

policies. Defendants’ denial is based on argument and references only those customers who did get refunds (not those who were denied), and the open-ended assertion in ¶ 11 of Jason Cardiff’s declaration that “Redwood was flexible with its refunds policy.”

748. Many customers experienced difficulty reaching customer service, and some had to contact Defendants repeatedly to request refunds or cancel unauthorized autoships.	Walker Dec. (PX-32), p. 17, ¶¶ 74, 75. Cooper Dec. (TRO PX-12), Dkt. 211, p. 5, ¶ 4 (unsuccessful in attempting to reach Redwood using customer service phone number). Rosen Dec. (TRO PX-13), Dkt. 211, p. 7, ¶ 3 (made many unsuccessful attempts to reach Redwood). Harrell-Cox Dec. (TRO PX-14), Dkt. 211, p. 9-10, ¶¶ 5-6 (customer service kept her on “hold” for more than two hours; unable subsequently to reach customer service by	Deny. The FTC has no direct evidence of customers complaining about this. Object as to the word “many.” Redwood had over 200,000 customers so the word “many” is relative. Defendants did offer a money-back guarantee and over 16,000 people received refunds from Redwood. Dkt. 7 at 155-165. Redwood was very flexible with its Refund policy, and would often refund money to people after the 30 days had passed. Exhibit A, Declaration of Jason Cardiff ¶111. Customer Service representatives were
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1	phone).	available for over 40
2		hours a week. Redwood
3	Reynolds Dec. (TRO PX-	had up to 12 customer
4	17), Dkt. 211, p. 14, ¶¶ 4-	service representatives
5	5 (consumer stayed on	working at a time. Ex. A,
6	the line for as much as an	Declaration of Jason
7	hour each time trying to	Cardiff ¶116.
8	reach customer service).	
9		
10	Grossman Dec. (TRO	
11	PX-20), Dkt. 211, p. 20-	
12	21, ¶ 4 (spent hours	
13	trying to get through to	
14	Redwood, including	
15	waiting on “hold” for	
16	more than an hour	
17	several times).	
18		
19	Roberts Dec. (TRO PX-	
20	23), Dkt. 211, p. 25-26,	
21	¶¶ 4-5 (difficulty getting	
22	through to customer	
23	service; was told twice	
24	that she would get a	
25	return call but none	
26	came).	
27		
28	<i>See also</i> Sands 1st Dec.	

	(TRO PX-1), Dkt. 7, p. 23, ¶ 68 & Dkt. 10-1, p. 30 (Att. 098); Dkt. 7, p. 23-24 ¶¶ 69-75 & Dkt. 10-1, p. 31 (Att. 099); Dkt. 7, p. 25-27 ¶¶ 76-84 & Dkt. 10-1, p. 32 (Att. 100).	
<p>FTC Response to SUF 748: Defendants do not dispute that many customers experienced difficulty reaching customer service to request refunds or cancel orders. Instead, they dismiss consumer declarations and the detailed descriptions offered by former employees who interacted with their customers on a daily basis, arguing that the FTC did not offer proof that Redwood received complaints about consumers not being able to reach customer service, and offering ¶ 116 of Jason Cardiffs’ declaration, alleging that “there were as many as 12 customer service agents” working Monday through Friday from 8:00 a.m. to 5:00 p.m. PST and that the “numbers of people working was based on the phone traffic” These general assertions without any explanation regarding the difficulty experienced by customers reaching Defendants is not sufficient to raise a genuine issue of material fact. There is no explanation of what occurred after 5:00 p.m. or on weekends. Defendants also offer no explanation for how they handled calls that were received during busy times of day, including whether provision was made for customers to leave voice mail messages, or even whether the company made efforts to return missed messages, including how that was done.</p>		
<p>749. In 2017, Jason Cardiff became upset that too many refunds were being</p>	<p>Melendez Dec. (PX-35), p. 7, ¶ 28.</p> <p>Walker Dec. (PX-32), p.</p>	<p>Deny, the customer service manager was not aware of any cap on refunds. Jason Cardiff’s</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<p>authorized and he ordered that no more than \$1,000 in refunds could be issued each day.</p>	<p>16-17, ¶ 73.</p> <p>Carranza Dec. (PX-33), p. 7, ¶ 27.</p> <p>See Rodoracio Dec. (PX-36), p. 4, ¶ 17 (at one point Redwood was receiving request for thousands of dollars of refunds each week; Jason Cardiff felt customer service was issuing too many refunds).</p>	<p>policy for refunds was that refunds could not exceed revenues for the day, and if they did exceed revenues, they were pushed over to the next day. Ex. A, Declaration of Jason Cardiff ¶110.</p> <p>Defendants did offer a money-back guarantee and over 16,000 people received refunds from Redwood. Dkt. 7 at 155-165.</p> <p>Redwood was very flexible with its Refund policy, and would often refund money to people after the 30 days had passed. Exhibit A, Declaration of Jason Cardiff ¶111.</p>
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FTC Response to SUF 749: Defendants do not dispute that Jason Cardiff became upset that too many refunds were being authorized or that he placed a cap on daily refunds. Jason Cardiff admits there was a cap on refunds (¶ 110). The remaining narrative is argument unrelated to the undisputed fact and should be disregarded.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	750. Jason Cardiff wanted sales reps to “save the sale” rather than give refunds.	Carranza Dec. (PX-33), p. 7, ¶ 27. See Melendez Dec. (PX-35), p. 7, ¶ 27 (Jason Cardiff said that if customer was persistent in demanding a refund, she should try to downsell them before issuing a refund). Rodoracio Dec. (PX-36), p. 3, ¶ 14 (got pushback from Jason Cardiff for giving too many refunds).	Admit.
18 19 20 21 22 23	751. The daily refund cap was sometimes increased to \$1,500 when sales of oral film strips were high. ¹⁸	Melendez Dec. (PX-35), p. 7, ¶ 28. Walker Dec. (PX-32), p. 16-17, ¶ 73.	Deny. Jason Cardiff’s policy for refunds was that refunds could not exceed revenues for the day, and if they did exceed revenues, they were pushed over to the
24 25	752. Daily refund	Melendez Dec (PX-35),	

¹⁸ The Cardiffs submitted a single objection to SUF 751-757; the FTC’s response begins on p. 439.

1	requests exceeded	p. 8, ¶ 29.	next day. Ex. A,
2	Jason Cardiff's		Declaration of Jason
3	refund limit nearly		Cardiff ¶110.
4	every day.		Defendants did offer a
5	753. Because daily	Melendez Dec. (PX-35),	money-back guarantee
6	refund requests	p. 8, ¶ 29 (representatives	and over 16,000 people
7	exceeded Jason	told consumers they	received refunds from
8	Cardiff's refund	should have read the	Redwood. Dkt. 7 at 155-
9	cap nearly every	terms and conditions that	165.
10	day, customer	were printed on their	Redwood was very
11	service	packing slip).	flexible with its Refund
12	representatives		policy, and would often
13	found reasons to	Rodoracio Dec. (PX-36),	refund money to people
14	deny or delay	p. 4, ¶ 18 (call center	after the 30 days had
15	refunds, and tried	sometimes gave partial	passed. Exhibit A,
16	to get customers to	refunds or allowed	Declaration of Jason
17	agree to partial	customers to keep the	Cardiff ¶111.
18	refunds on just the	remaining product).	
19	unused portion of		
20	the product.	Carranza Dec. (PX-33),	
21		p. 7, ¶ 27.	
22	754. Customer service	Melendez Dec. (PX-35),	
23	representatives also	p. 8, ¶ 30.	
24	created a waiting		
25	list of consumers	Walker Dec. (PX-32), p.	
26	whose requests for	16-17, ¶ 73.	
27	their money back		
28	had been approved	See also Carranza Dec.	

1	but who could not	(PX-33), p. 6-7, ¶ 26
2	yet be paid due to	(would hear from
3	the daily refund	customers who were on
4	cap.	the refund list but had not
5		yet received their
6		refund).
7	755. The list of	Melendez Dec. (PX-35),
8	customers waiting	p. 8, ¶ 30 & p. 97 (Att. 7)
9	for approved	(by December 7, 2017,
10	refunds sometimes	the \$1,000/day cap had
11	became long due to	been reached for the
12	backlogs from	entire month of
13	previous days.	December).
14		
15		Carranza Dec. (PX-33),
16		p. 6, ¶ 24 (outstanding
17		refunds would pile up for
18		months).
19	756. Customer service	Melendez Dec. (PX-35),
20	staff fielded many	p. 8, ¶ 30.
21	complaints from	
22	customers who had	Garcia Dec. (PX-34), p.
23	been promised	4, ¶ 13 (received many
24	refunds but who	calls from customers who
25	had not yet	had been promised a
26	received them after	refund but had not
27	days or weeks of	received it).
28	waiting and	

multiple phone calls.	See also Walker Dec. (PX-32), p. 17, ¶ 73 (refund cap contributed to increased complaints and chargebacks).	
757. Despite the backlog, Jason Cardiff refused to change the policy to allow more refunds each day.	Melendez Dec. (PX-35), p. 8, ¶ 30.	

FTC Response to SUF 751-757: In response to detailed explanations of refund caps, backlogs, and angry customer responses provided by four former managerial employees who interacted daily with customers, including Redwood documents that confirm their experiences (Melendez Dec. (PX-35), p. 8, ¶ 30 & p. 97 (Att. 7) (by December 7, 2017, the \$1,000/day cap had been reached for the entire month of December)), Defendants offer a general denial that the refund caps did not exceed daily revenues and were sometimes pushed over to the next day. These general assertions are not inconsistent with the testimony of employees who provide much more detailed information. The general denials do not raise a genuine issue of material fact.

758. [reserved]		
759. [reserved]		
760. [reserved]		

VIII. Deceptive Testimonials for Eupepsia Thin

FTC Fact	FTC Citation	Cardiff
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			Admit/Objection
1			
2	761. Defendants	SUF 491, 493-494.	Admit.
3	represented that the		
4	individuals		
5	featured in their		
6	Eupepsia Thin		
7	infomercials		
8	named Dan, Karen,		
9	and Todd had used		
10	the product to lose		
11	as much as 45, 90,		
12	and 132 pounds,		
13	respectively.		
14	762. In fact, none of the	Hogan Dec. (PX-45), p.	Deny. Jason Cardiff did
15	three	1, ¶ 6 (had not heard of	not “instruct” Ty Sherrell
16	testimonialists	Eupepsia Thin before	about what to tell the
17	named Danny,	shooting the commercial	testimonials to say in
18	Karen, and Todd	and had never used it).	Redwood’s television
19	used Eupepsia		advertising. Cardiff
20	Thin for the weight	Preston Dec. (PX-46), p.	instructed Sherrill to
21	loss they claimed	1, ¶¶ 3, 6, 7 (had not even	locate indigicuals who
22	in the	heard of Eupepsia Thin	took the products and
23	advertisement.	prior to filming	were willing to provide a
24		testimonial).	testimonial. Ex. A, Jason
25			Cardiff Declaration ¶¶91-
26		Spero Dec. (PX-47), p. 1,	92.
27		¶ 6 (did not use Eupepsia	Deny. The Cardiffs
28		Thin to lose weight and	ensured that the

	had not even heard of it prior to filming commercial).	testimonials were real and from the person who said them. The Cardiffs
763. Testimonialists Dan Hogan, Karen Spero, and Todd Preston had previously lost weight by means other than Eupepsia Thin.	Hogan Dec. (PX-45), p. 1, ¶ 3 (lost 30 to 45 pounds in 2011 due to medical condition and resulting cross fit training program). Preston Dec. (PX-46), p. 1, ¶ 3 (lost 132 after 2010 gastric bypass surgery). Spero Dec. (PX-47), p. 1, ¶ 3 (lost 90 pounds in 2014 to 2015 through diet and exercise, working with a doctor and a nutritionist).	had each testimonialist sign a form that indicated that what they were saying was true and based off their own personal experience with the product. Ex. A, Jason Cardiff Declaration ¶¶91-92. The form said: All of the statements made are true and accurate, all of my on-screen representation, of the product [product], are of my own true story. <i>Id.</i> If none of the testimonialists used the product and lied about it by signing the form, it was unbeknownst to the Cardiffs

FTC Response to SUF 762 – 763: Defendants do not dispute that the testimonialists did not use Eupepsia Thin to lose the weight they discussed in the infomercial and had lost weight by other means. Therefore, defendants’ denial in the face of specific evidence submitted by the Commission does not create a

genuine dispute of material fact. The rest of their response is just argument and should be disregarded. Whether Jason Cardiff knew the testimonials were false is not relevant to liability.

However, while he denies it in his response here, Jason Cardiff knew that the testimonialists had not used Eupepsia Thin to lose the weight they discussed in the infomercial. See Dkt. 434-1, p. 39-40 (Att. 3) (Ty Sherrell emails Jason Cardiff on February 1, 2018 that “[I] am working on getting testimonials from people who have already lost weight and I’m getting before pictures for them . . . they will still have the product and do the testimonials but ill [sic] have before pictures from their past fat lives lol [.] this is what you pay me for uncle Jason, to use my [expletive deleted] brain.” Jason Cardiff replies “Love it big time[.] Ty you are great.”). Jason Cardiff thus knew that the releases signed by the testimonialists were not true or based off their own experience with Eupepsia Thin.

764. Testimonialists Dan Hogan, Karen Spero, and Todd Preston were represented by talent agency Icon Studios Dallas.	Hogan Dec. (PX-45), p. 3, ¶ 4. Preston Dec. (PX-46), p. 1, ¶ 3. Spero Dec. (PX-47), p. 1, ¶ 4.	Neither admit nor deny, Redwood never had any association with Icon Studios Dallas. Ex. A, Jason Cardiff Declaration at ____.
765. Icon was looking in early 2017 for actors who had lost at least 20 pounds and testimonialists Dan Hogan, Karen	Hogan Dec. (PX-45), p. 1, ¶ 5 & p. 3-4 (Att.1) (received email from Icon January 31, 2017). Preston Dec. (PX-46), p.	

1	Spero, and Todd	1, ¶ 4 (saw call for talent	
2	Preston applied.	posted by Icon in late	
3		January or early February	
4		2017).	
5			
6		Spero Dec. (PX-47), p. 1,	
7		¶ 5 (received email from	
8		Icon in late January or	
9		early February 2017).	
10	766. Icon requested	Hogan Dec. (PX-45), p.	
11	pictures of how the	1, ¶ 5 & p. 3-4 (Att. 1).	
12	testimonialists		
13	looked before and	Preston Dec. (PX-46), p.	
14	after their weight	1, ¶¶ 4-5.	
15	loss.		
16		Spero Dec. (PX-47), p. 1,	
17		¶ 5.	
18	FTC Response to SUF 764 – 766: The Cardiffs do not dispute that the Dan		
19	Hogan, Karen Spero, and Todd Preston were represented by Icon Studios Dallas,		
20	and that Icon found testimonialists for the Eupepsia Thin infomercial by		
21	soliciting for people who had already lost at least 20 pounds. The Cardiffs’ use		
22	of the phrase “neither admit nor deny” is the functional equivalent of admitting		
23	FTC SUF 764-766.		
24	767. The Eupepsia Thin	Walker Dec. (PX-32), p.	Objection irrelevant and
25	infomercial was	12, ¶ 52.	lacks timeframe.
26	filmed in February		Defendants stopped
27	2017.	Hogan Dec. (PX-45), p.	marketing and changed
28		1, ¶ 6.	the claims that were

	<p>Preston Dec. (PX-46), p. 1, ¶¶ 5, 7 & p. 5 (Att. 2).</p> <p>Spero Dec. (PX-47), p. 1, ¶ 6.</p>	<p>made on their websites in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶ 7, 9, and 46-53. The last air date and services provided by Mercury Media to Redwood for Eupepsia Thin was on December 25, 2017. Dkt. 432-1 at 25. The last air date for TBX Free was on October 30, 2017. Dkt. 432-2 at 3-8</p>
<p>FTC Response to SUF 767: The Cardiffs do not dispute that the Eupepsia Thin infomercial was filmed in February 2017.</p> <p>The timeframe is identified in the fact itself, which is relevant to the Cardiffs' liability for deceptively advertising Eupepsia Thin, and is relevant to their individual liability for injunctive and monetary relief. Statements by and/or images of the testimonialists were used in Defendants' controltheweight.com website, which was live as of August 9, 2018 (Dkt. 434-1, p. 6, ¶ 18 & Dkt. 434-1, p. 189, 205 (Att. 76)</p>		
<p>768. The infomercial director told each of the testimonialists to</p>	<p>Hogan Dec. (PX-45), p. 1, ¶ 6 & p. 5-9 (Att. 2).</p> <p>Preston Dec. (PX-46), p.</p>	<p>Deny. The Cardiffs ensured that the testimonials were real and from the person who</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	say that their weight loss resulted from using Eupepsia Thin.	1, ¶ 6 & p. 3-4 (Att. 1). Spero Dec. (PX-47), p. 1, ¶ 6 & p. 3-6 (Att. 1).	said them. The Cardiffs had each testimonialist sign a form that indicated that what they were saying was true and based off their own personal experience with the product. Ex. A, Jason Cardiff Declaration ¶¶91-92. The form said: All of the statements made are true and accurate, all of my on-screen representation, of the product [product], are of my own true story. <i>Id.</i> If none of the testimonialists used the product and lied about it by signing the form, it was unbeknownst to the Cardiffs
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FTC Response to SUF 768: The Cardiffs do not dispute that the infomercial director instructed three testimonialists to say that their weight loss resulted from using Eupepsia Thin. These testimonialists submitted sworn declarations saying that the infomercial director told them during the filming to say that their weight loss resulted from using Eupepsia Thin, even though none of them had. See SUF 763. In the face of this evidence, the Declaration of Jason Cardiff (who does not

claim personal knowledge of communications between the director and the testimonialists) provides no basis for the Cardiffs’ denial of SUF 768. Although defendants’ knowledge is not relevant or required to show liability, Jason Cardiff was aware that the testimonials had not used Eupepsia Thin to lose the weight they discussed in the infomercial. See Dkt. 434-1, p. 39-40 (Att. 3) (Ty Sherrell emails Jason Cardiff on February 1, 2018 that “[I] am working on gttting testimonials from people who have already lost weight and I’m getting before pictures for them . . . they will still have the product and do the testiomonials but ill [sic] have before picutures from their past fat lives lol [.] this is what you pay me for uncle Jason, to use my [expletive deleted] brain.” Jason Cardiff replies “Love it big time[.] Ty you are great.”). Jason Cardiff thus knew that the releases signed by the testimonialists were not true or based on their own experience with Eupepsia Thin.

769. [reserved]		
770. [reserved]		
771. [reserved]		

IX. Defendants’ Autoship Plans

A. Defendants Enrolled Consumers in Autoship Plans Without Their Authorization

FTC Fact	FTC Citation	Cardiff Admit/Objection
772. Defendants sold most of their oral film strips through auto-ship plans, which caused regular shipments	Walker Dec. (PX-32), p. 12, ¶ 55. Melendez Dec. (PX-35), p. 2, ¶ 8.	Objection as to the timeframe. As of July 2018 Defendants did not offer auto-ship program because of the CRM issue. Ex. A, Jason

1	to be sent to	Carranza Dec. (PX-33),	Cardiff Declaration ¶89.
2	consumers with	p. 3, ¶ 11.	The customer breakdown
3	charges to their		for autoship was 35%
4	debit or credit	See Rodoracio Dec. (PX-	autoship and 65% one
5	cards until the	36), p. 2, ¶ 10 (Jason	time purchases. Ex. A,
6	customer cancelled	Cardiff made it clear that	Jason Cardiff Declaration
7	the order.	sales representatives	¶116.
8		were only to sell thin film	Redwood had a strict
9		strip products with auto-	policy to not place
10		ships programs).	anyone on auto ship
11			unless the customer was
12			fully aware of the auto
13			ship and agreed to the
14			auto ship program. Ex. A,
15			Jason Cardiff Declaration
16			¶87.

FTC Response to SUF 772: Defendants do not dispute that they used autoship, but deny that most of their customers were placed on autoship and that autoship was used after July 2018. The references they cite do not support their claimed breakdown of auto-ship vs. straight sale percentages – in fact, they say nothing about the distribution of auto-ship vs. straight sale. If the Defendants intended instead to cite to ¶ 118 of Jason Cardiff’s declaration, the mere recitation of percentages without any explanation for the declarant’s basis for knowing such specific numbers or any reference to any company document should be credited as no more than a general denial insufficient to raise a genuine issue of material fact. The Defendants’ general assertion that there was a policy to inform customers about auto-ship, citing ¶ 87 of that Declaration, is not relevant to the undisputed fact: defendants sold most of their film strips on auto-ship plans.

Whether Defendants offered auto-ship programs after July 2018 is not relevant to Defendants' individual liability for their actions and is not material.

773. The auto-ship program was also known as a continuity program or a subscription program.	Melendez Dec. (PX-35), p. 2, ¶ 8.	Admit
774. If a customer purchased a one-month supply, another shipment would go out to them one month later and their credit or debit card would be charged.	Walker Dec. (PX-32), p. 12, ¶ 55. Carranza Dec. (PX-33), p. 3, ¶ 11. Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 14, ¶ 36 & Dkt. 10, p. 165, 166 (Att. 072) ("RETURN & REFUND" information received with FTC's TBX-FREE order included fine print statement that "If you have purchased a 1-month, 2-month, or 3-month supply you have been auto enrolled into our monthly subscription	Deny. A customer would only get another shipment if they the auto-ship designation was on. Redwood had a strict policy to not place anyone on auto ship unless the customer was fully aware of the auto ship and agreed to the auto ship program. Ex. A, Jason Cardiff Declaration ¶87.

	<p>program in order to reach your goals.”</p> <p>See also Garcia Dec. (PX-34), p. 2, ¶ 8 (sales representatives sometimes were only allowed to place continuity orders).</p>	
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FTC Response to SUF 774: Defendants dispute that customers who purchased one-month supplies received additional shipments every month charged to their credit and debit cards, citing a very general statement by Jason Cardiff that there was a “strict policy” to inform customers of the auto-ship program. No detail is offered regarding this policy, including what the policy looked like, who received notice of the policy, how it was enforced, or whether it was followed. In contrast, Plaintiff has offered very specific examples of how customers were charged after placing one-time orders, including the experience of an FTC investigator and the testimony of former employees familiar with Defendants’ daily interactions with customers. Defendants’ general denial without any factual elaboration or reference to documents does not raise a genuine issue of material fact.

<p>775. Redwood’s website was set up so that the default option was to place the customer on auto-ship.</p>	<p>Carranza Dec. (PX-33), p. 3, ¶ 11.</p>	<p>Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶118.</p>
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FTC Response to SUF 775: Defendants do not dispute that Redwood’s website

was set up so that the default option was to place the customer on auto-ship. This fact is relevant to Defendants' liability for injunctive and monetary relief under the FTC Act, ROSCA, and EFTA.

776. Jason Cardiff instructed the website developers to design the company's website that way.	Carranza Dec. (PX-33), p. 3, ¶ 11.	Objection, vague. "That way" is not defined. Because of this, Defendants can neither admit nor deny.
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FTC Response to SUF 776: Defendants do not dispute that Jason Cardiff instructed the website developers to design the company's website that way (to default to auto-ship, see immediately preceding SUF), and their vagueness objection is not a serious objection. Their use of the phrase "neither admit nor deny" is the functional equivalent of not disputing the fact.

777. Jason Cardiff was advised by a payment processing consultant in March 2016 that if the product being sold involved auto-shipping or recurring billing, "there should either be an option for the customer not to enter into	Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 56 (Att. 12).	Object as to Greg Berard's position or occupation, otherwise, the document speaks for itself
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1	auto-ship/recurring		
2	billing, or at a		
3	minimum a		
4	disclosure on the		
5	checkout page		
6	disclosing that the		
7	product is subject		
8	to enrollment in an		
9	auto-ship/recurring		
10	billing program,		
11	when the		
12	customer's card		
13	will be billed		
14	(monthly,		
15	quarterly, etc.), and		
16	how to cancel auto-		
17	ship."		
18	778. Jason Cardiff was	Sands 3rd Dec. (PX-51),	
19	advised by a	p. 3, ¶ 9 & p. 56 (Att.	
20	payment	12).	
21	processing		
22	consultant in		
23	March 2016 that it		
24	was not sufficient		
25	to have		
26	information about		
27	an auto-		
28	ship/recurring		

1	billing program		
2	only on the “terms		
3	and conditions”		
4	page of the		
5	website, and that		
6	this information		
7	should be on the		
8	checkout page.		
9	779. Jason Cardiff was	Sands 3rd Dec. (PX-51),	
10	advised by a	p. 3, ¶ 9 & p. 56 (Att.	
11	payment	12).	
12	processing		
13	consultant in		
14	March 2016 that “I		
15	agree” should not		
16	be pre-checked on		
17	the website’s		
18	checkout page.		
19	780. Jason Cardiff was	Sands 3rd Dec. (PX-51),	
20	advised by a	p. 3, ¶ 9 & p. 64 (Att.	
21	payment	16).	
22	processing		
23	consultant in July		
24	2017 that the TBX-		
25	FREE.com website		
26	said nothing about		
27	monthly continuity		
28	plans.		

1	781. Jason Cardiff was	Sands 3rd Dec. (PX-51),	
2	advised by a	p. 3, ¶ 9 & p. 64 (Att.	
3	payment	16).	
4	processing		
5	consultant in July		
6	2017 that recurring		
7	subscriptions had		
8	to be clearly		
9	disclosed on the		
10	TBX-FREE.com		
11	website before the		
12	customer clicked		
13	the purchase		
14	button.		
15	782. Jason Cardiff was	Sands 3rd Dec. (PX-51),	
16	advised by a	p. 3, ¶ 9 & p. 64 (Att.	
17	payment	16).	
18	processing		
19	consultant in July		
20	2017 that “many		
21	customers are		
22	calling saying they		
23	only ordered		
24	once.”		
25	FTC Response to SUF 777-782: Defendants do no dispute that Greg Berard		
26	advised Jason Cardiff in March 2016 and July 2017 that if the product being sold		
27	involved auto-shipping or recurring billing, “there should either be an option for		
28	the customer not to enter into auto-ship/recurring billing, or at a minimum a		

disclosure on the checkout page (777); that it was not sufficient to have information about an auto-ship/recurring billing program only on the “terms and conditions” page of the website (778); that “I agree” should not be pre-checked on the website’s checkout page (779); that the TBX-FREE.com website said nothing about monthly continuity plans (780); that recurring subscriptions had to be clearly disclosed on the TBX-FREE.com website before the customer clicked the purchase button (781); and that “many customers are calling saying they only ordered once” (782). Defendants only object to the FTC’s characterization of Mr. Berard as a “payment company consultant,” without offering any other explanation for who he is or what relation he had to Redwood’s credit and debit card processing.

783. Redwood enrolled customers in these auto-ship plans without asking their permission.	Walker Dec. (PX-32), p. 12, ¶ 55. Melendez Dec. (PX-35), p. 4, ¶ 16 (spoke to sales representatives who were not telling consumers they were being signed up for auto-ship). Carranza Dec. (PX-33), p. 3, ¶ 11-13 (customers did not realize they were being placed on auto-ship plan). Fromal Dec. (TRO PX-	Deny. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. Ex. A, Declaration of Jason Cardiff ¶87.
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1 11), Dkt. 211, p. 2, ¶ 2
2 (ordered one-month of
3 TBX-FREE, and was
4 then sent and charged for
5 15 additional times for
6 total of \$961).

7
8 Cooper Dec. (TRO PX-
9 12), Dkt. 211, p. 5, ¶ 3
10 (made it clear on the
11 telephone that he was
12 ordering a one-time 30-
13 day trial of Eupepsia
14 Thin; was charged the
15 next month for another
16 order).

17
18 Rosen Dec. (TRO PX-
19 13), Dkt. 211, p. 7, ¶¶ 2-4
20 (authorized one-time
21 payment of \$49.95 for
22 TBX-Free using debit
23 card; received another
24 order and had \$49.95
25 removed from checking
26 account each of the next
27 two months).
28

1 Harrell-Cox Dec. (TRO
2 PX-14), Dkt. 211, p. 9, ¶¶
3 3-5 (ordered TBX-FREE
4 for about \$89.00 using
5 debit card; package
6 arrived three weeks after
7 order was placed, and
8 another \$89.95 was
9 removed from bank
10 account five days after
11 that).

12
13 Garrett Dec. (TRO PX-
14 15), Dkt. 211, p. 11, ¶¶ 2-
15 3 (purchased 60-day
16 supply of TBX-FREE in
17 January 2018 for
18 \$169.90; discovered
19 another charge on credit
20 card for \$169.90 in
21 February 2018).

22
23 Reynolds Dec. (TRO PX-
24 17), Dkt. 211, p. 14-15,
25 ¶¶ 2-7 (ordered one-
26 month supply for \$69.95
27 using debit card; received
28 multiple shipments over

	the next months with total of \$319.70 withdrawn from his bank account).	
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FTC Response to SUF 783: Defendants do not dispute the first-hand experiences of six consumer declarants who were enrolled in auto-ship without their permission, or respond to the detailed recollections of Redwood employees that sales reps were not disclosing the auto-ship program. Instead, they interpose a very general “strict policy” against placing customers on autoship without their permission. No detail or supporting documentation is offered regarding this policy, including what the policy looked like, who received notice of the policy, how it was enforced, or whether it was followed. In contrast, Plaintiff has offered very specific examples of how customers were charged after placing one-time orders, including the experience of an FTC investigator and the testimony of former employees familiar with Defendants’ daily interactions with customers. Defendants’ general denial without any factual elaboration or reference to documents does not raise a genuine issue of material fact.

784. Auto-ships were unpopular with potential customers.	Melendez Dec. (PX-35), p. 2, ¶ 9. Carranza Dec. (PX-33), p. 3, ¶ 12. Rodoracio Dec. (PX-36), p. 3, ¶ 13.	Objection as to overly broad and generic and not supported by the evidence. Objection as to hearsay. Melendez, Rodoracio or Carranza had no personal experience with purchasing items from Redwood on the autoship program. Any reliance on
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		what customers said is hearsay, otherwise the evidence is not relevant.
<p>FTC Response to SUF 784: Defendants do not dispute that auto-ships were unpopular with potential customers. This was the testimony of former managerial employees who had daily interactions with customers that formed the basis of their knowledge concerning this undisputed fact. This is not hearsay, but a general impression that informed the actions of these former employees, which included notifying the Cardiffs that the auto-ship program was unpopular. It is relevant to individual liability for injunctive and monetary relief.</p>		
<p>785. Jason Cardiff instructed his sales staff not to mention the auto-ship aspect to potential customers.</p>	<p>Melendez Dec. (PX-35), p. 2, ¶ 9.</p> <p>Carranza Dec. (PX-33), p. 3, ¶ 12.</p> <p>See also Rodoracio Dec. (PX-36), p. 2-3, ¶ 11 (sales reps were encouraged not to tell consumers about the auto-ship program).</p>	<p>Deny. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. Ex. A, Declaration of Jason Cardiff ¶87.</p>
<p>786. Jason Cardiff instructed his sales staff to answer “no” if prospective customers asked whether they</p>	<p>Melendez Dec. (PX-35), p. 2, ¶ 9.</p>	

1	would be placed on		
2	an auto-ship		
3	program.		
4	FTC Response to 785-786: Defendants do not specifically dispute that Jason		
5	Cardiff instructed his sales staff not to mention the auto-ship aspect to potential		
6	customers, or that Jason Cardiff instructed his sales staff to answer “no” if		
7	prospective customers asked whether they would be placed on an auto-ship		
8	program. Defendants instead vaguely deny these undisputed facts by interposing		
9	a general “strict policy” against placing customers on autoship without their		
10	permission. No detail is offered regarding this policy, including what the policy		
11	looked like, who received notice of the policy, how it was enforced, or whether it		
12	was followed. In contrast, Plaintiff has offered very specific examples of an FTC		
13	investigator and customers who were charged after placing one-time orders (see		
14	SUF 783), which is consistent with three Redwood employees’ testimony that		
15	they were instructed not to tell consumers about the auto-ship enrollment.		
16	Defendants’ general denial without any factual elaboration or reference to		
17	documents does not raise a genuine issue of material fact.		
18	787. Jason Cardiff	Melendez Dec. (PX-35),	Object as to relevance,
19	would get upset if	p. 2, ¶ 9.	the autoship program was
20	sales		no longer in existence as
21	representatives told	Carranza Dec. (PX-33),	of July, 2018. Ex. A,
22	customers about	p. 3, ¶ 12.	Declaration of Jason
23	the auto-ship or		Cardiff ¶89.
24	that they could		Deny. Redwood had a
25	cancel it at any		strict policy to not place
26	time.		anyone on autoship
27			unless the customer was
28			fully aware of the

		autoship and agreed to the terms and conditions of the program. Ex. A, Declaration of Jason Cardiff ¶87.
<p>FTC Response to SUF 787: Defendants do not specifically deny that Jason Cardiff would get upset if sales representatives told customers about the auto-ship or that they could cancel it at any time. Their general denial without any direct refutation or any factual elaboration or reference to documents does not raise a genuine issue of material fact. The Cardiffs' extraneous argument should be disregarded.</p> <p>It is not relevant whether the auto-ship program was no longer in place in July 2018. The Complaint covers the entire period the challenged products were marketed and sold by Defendants, 2013-2018.</p> <p>This undisputed fact is relevant to Jason Cardiff's individual liability for injunctive and monetary relief.</p>		
788. When customers received their order, the top half of the packing slip would be their receipt and the bottom half would be the terms and conditions for cancellations and	Melendez Dec. (PX-35), p. 2, ¶ 9. Carranza Dec. (PX-33), p. 3, ¶ 12. Rodoracio Dec. (PX-36), p. 2-3, ¶ 11.	Admit.

1	refunds.		
2	789. The terms and	Melendez Dec. (PX-35),	Deny. The FTC presents
3	conditions were in	p. 2, ¶ 9.	no evidence of this
4	small font, and the		outside of testimony of a
5	last paragraph said	Carranza Dec. (PX-33),	former employee. There
6	that 1-month, 2-	p. 3, ¶ 12 (packing slip	is no evidence of the
7	month, and 3-	had information about the	terms and conditions
8	month orders had	auto-ship program in	presented.
9	been auto-enrolled	small type at the bottom	
10	into Redwood's	of the page).	
11	monthly		
12	subscription	See also Rodoracio Dec.	
13	program.	(PX-36), p. 2-3, ¶ 11.	
14	FTC Response to SUF 788-789: Defendants, when confronted with specific		
15	documents (e.g., a copy of the packing slip in question (Dkt. 428-3, p. 11-13))		
16	and former employee testimony, do not specifically deny that the terms and		
17	conditions were in small font, and the last paragraph said that 1-month, 2-month,		
18	and 3-month orders had been auto-enrolled into Redwood's monthly subscription		
19	program. Defendants instead attack the weight of this evidence as insufficient		
20	and deny that the packing slip contained terms and conditions of the auto-ship		
21	program without directing the Court to some other explanation. Defendants offer		
22	no specific reference to terms and conditions of sale that are any different than		
23	the ones recognized by former employees familiar with Defendants' daily sales		
24	practices.		
25	790. "Straight sales"	Walker Dec. (PX-32), p.	Admit
26	were one-time	14, ¶ 64.	
27	sales of Redwood		
28	products that did	Melendez Dec. (PX-35),	

1	not result in	p. 2, ¶ 8.	
2	consumers being		
3	put on auto-ship	Garcia Dec. (PX-34), p.	
4	programs.	2, ¶ 8.	
5	791. Jason Cardiff did	Walker Dec. (PX-32), p.	Object to the phrase “did
6	not like straight	14, ¶ 64.	not like.” It is vague and
7	sales, because they		overly broad. Jason
8	decreased long-	See also Carranza Dec.	Cardiff wanted to help
9	term sales revenue	(PX-33), p. 6, ¶ 25 (Jason	consumers achieve their
10	streams.	Cardiff felt strongly that	goals. However, Jason
11		the auto-ship program	Cardiff understood that it
12		was necessary).	was economically better
13			for Redwood if
14			customers reupped every
15			month as opposed to
16			having to spend more
17			money on customer
18			acquisition. Ex. A,
19			Declaration of Jason
20			Cardiff ¶90.
21	FTC Response to SUF 791: Defendants do not dispute that Jason Cardiff did		
22	not like straight sales, because they decreased long-term sales revenue streams.		
23	Instead, they argue that the FTC’s fact was vague and too broad for them to		
24	address, but confirm that auto-ship was economically “better for Redwood.”		
25	Defendants’ apt response is an indication that the undisputed fact was not so		
26	vague as to make a direct response impossible.		
27	792. For a brief period	Walker Dec. (PX-32),	Deny. The straight sales
28	in 2017, Jason	p.14, ¶ 64.	option was always

1	Cardiff allowed		available. Ex. A, Jason
2	sales	Melendez Dec. (PX-35),	Cardiff Declaration ¶87.
3	representatives to	p. 2, ¶ 10.	
4	offer consumers		
5	“straight sales” of	Carranza Dec. (PX-33),	
6	Redwood products.	p. 4, ¶ 15.	
7			
8		Rodoracio Dec. (PX-36),	
9		p. 4, ¶ 19.	
10	FTC Response to SUF 792: Defendants dispute that “straight sales” of		
11	Redwood products were only allowed for a brief period. Defendants do not offer		
12	any specific rebuttal or documentary evidence to counter the more detailed		
13	statements of four former employees who had daily contact with other employees		
14	and customers. Defendants do not explain how Jason Cardiff knows his assertion		
15	is true, how the “straight sales” policy he references was communicated to		
16	employees or what the policy looked like.		
17	793. After allowing	Walker Dec. (PX-32), p.	Deny. The straight sales
18	straight sales for a	14, ¶ 64.	option was always
19	short period, Jason		available. Ex. A, Jason
20	Cardiff directed	Rodoracio Dec. (PX-36),	Cardiff Declaration ¶87.
21	that all customers	p. 4-5, ¶ 19 (Jason	Redwood had a strict
22	be placed on auto-	Cardiff stopped offering	policy to not place
23	ship continuity	the single-sale option	anyone on autoship
24	plans.	after seeing that revenues	unless the customer was
25		had gone down).	fully aware of the
26	794. As a last resort,	Rodoracio Dec. (PX-36),	autoship and agreed to
27	sales	p. 2, ¶ 10.	the terms and conditions
28	representatives		of the program. <i>Id.</i>

1	could make a		
2	straight sale if		
3	necessary to save		
4	the sale, but were		
5	not otherwise		
6	supposed to offer it		
7	as an option.		
8	FTC Response to SUF 793-794: Defendants do not specifically dispute that		
9	Jason Cardiff ordered that all customers be placed on auto-ship programs and		
10	that employees could only use a “straight sale” to save the sale. The availability		
11	of the straight sale option does not dictate that sales reps were authorized to use it		
12	as a first (as opposed to last) resort, and the Cardiffs offer no detail or evidence		
13	disputing that sales reps were restricted to offering only the autoship option to		
14	customers. Defendants’ additional argument relates to whether the autoship plan		
15	was adequately disclosed and should be disregarded.		
16	795. From 2014 to	Melendez Dec. (PX-35),	Admit
17	2018, Redwood	p. 1, 3, ¶¶ 6, 14.	
18	maintained an in-		
19	house call center	Garcia Dec. (PX-34), p.	
20	that received both	1, ¶ 4 (beginning in Fall	
21	sales calls and	2017, she was making	
22	customer service	and receiving sales calls,	
23	calls.	as well as handling	
24		customer service calls).	
25			
26		Walker Dec. (PX-32), p.	
27		12, ¶ 53.	
28			

	See Rodoracio (PX-36), p. 2, ¶ 8 (night shift usually handled orders generated by late-night television advertising; calls during the day shift tended to be complaints and questions).	
796. Jason Cardiff wrote the scripts used by sales representatives.	Walker Dec. (PX-32), p. 12 ¶ 54. Melendez Dec. (PX-35), p. 3, ¶ 11 (Jason Cardiff converted talking points into a more formal phone script).	Deny. There were no scripts used by sales representatives. Cardiff developed bullet points, however the conversations between representatives and consumers was relatively script free. Ex. A, Jason Cardiff Declaration ¶113.
FTC Response to SUF 796: Defendants dispute that they ever used sales scripts, but admit that they used “bullet points.” This does not raise a genuine issue of material fact.		
797. Jason Cardiff supervised the training of sales and customer service representatives and sometimes worked	Walker Dec. (PX-32), p. 12 ¶ 54. Carranza Dec. (PX-33), p. 3, ¶ 13; p. 5-6, ¶ 22 (Jason Cardiff personally coached reps; met one-	Deny. Jason Cardiff did not supervise or train or supervise the training of sales and customer service representatives. This was the responsibility of Danielle

1	individually with	on-one with reps	Walker and the customer
2	sales	periodically).	service manager. Ex. A,
3	representatives.		Declaration of Jason
4		Rodoracio Dec. (PX-36),	Cardiff ¶115.
5		p. 1 ¶ 6.	
6	FTC Response to SUF 797: Defendants generally and without offering details		
7	deny that Jason Cardiff ever supervised or personally participated in the training		
8	of customer service or sales representatives. Instead, Defendants assert that		
9	Danielle Walker was responsible for this training. Three former employees offer		
10	detailed accounts of how personally involved Jason Cardiff was in the training of		
11	these sales and customer service employees, including very specific references to		
12	Jason Cardiff's periodic one-on-one coaching sessions with employees. The		
13	Defendants' general denial without specific details or reference to any company		
14	document is not sufficient to raise a genuine issue of material fact.		
15	798. In 2017, Redwood	Walker Dec. (PX-32), p.	Deny. The straight sales
16	added a disclosure	13, ¶ 56.	option was always
17	of the auto-ship		available. Ex. A, Jason
18	program to its call	Melendez Dec. (PX-35),	Cardiff Declaration ¶87.
19	center scripts, but	p. 4, ¶ 16.	Redwood had a strict
20	many sales		policy to not place
21	representatives did	See Carranza Dec. (PX-	anyone on autoship
22	not tell customers	33), p. 3,	unless the customer was
23	about it.	¶ 13 (phone scripts were	fully aware of the
24		revised in late 2017 to	autoship and agreed to
25		say something about the	the terms and conditions
26		auto-ship program).	of the program. <i>Id.</i>
27			
28		See also Garcia Dec.	

	<p>(PX-34), p. 2-3, ¶ 9 & p. 12 (Att. 2) (fine print disclosure in script that “for your convenience we will send your next order 30 days from the original billing date . . . If your feel TBX-FREE is not for you, cancel within the 30 days [sic] period to avoid the enrollment in the stop smoking program.”).</p>	
<p>799. Sales representatives would not tell customers about the auto-ship program because, if they did, many potential customers would not complete their purchases.</p>	<p>Walker Dec. (PX-32), p. 13, ¶ 57.</p> <p>Garcia Dec. (PX-34), p. 3, ¶ 11.</p>	
<p>FTC Response to SUF 798-799: Defendants do not specifically deny that many sales representatives did not tell customers about the auto-ship disclosure, or that sales representatives would not tell customers about the auto-ship program for fear of losing the sale. Instead, Defendants refer to their purported “strict</p>		

policy,” which has never been produced in any written form and which does not address the behavior of Redwood sales representatives. Here, Danielle Walker, a managerial employee who supervised sales and customer service managers, states that many sales representatives were not making the auto-ship disclosure. This testimony is corroborated by three other former employees with direct knowledge of Redwood’s sales practices. Defendants’ general denial, which does not specifically address the testimony of former employees, is insufficient to raise a genuine issue of material fact.

800. Redwood sales representatives worked on commission.	<p>Melendez Dec. (PX-35), p. 4, ¶ 15.</p> <p>See also Garcia Dec. (PX-34), p. 3, ¶ 10 (company set sales incentives, including through commission-based income).</p> <p>Carranza Dec. (PX-33), p. 5, ¶ 22.</p> <p>See also Rodoracio Dec. (PX-36), p. 3, ¶ 12 (sales representatives competed for bonuses and commissions).</p>	Sales representatives were paid hourly and received bonuses based on the number of successful sales they had. Exhibit 1, Jason Cardiff Declaration ¶117.
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FTC Response to SUF 800: Defendants do not dispute that sales employees were paid bonuses based on the number of sales. The dispute as to the word

“commissions” does not raise a genuine issue of material fact.

801. The commission structure rewarded sales reps for making auto-ship sales.	Melendez Dec. (PX-35), p. 4, ¶ 15. See also Rodoracio Dec. (PX-36), p. 3, ¶ 12 (in order to close sales, sales representatives would deny or de-emphasize the auto-ship program).	Deny as to the commission, however admit that sales representatives were responsible for placing consumers on auto-ship who wanted to be on the auto-ship program. Ex. A, Jason Cardiff Declaration ¶¶117-118.
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FTC Response to SUF 801: The Cardiffs’ general denial offers no specific details disputing the declarations of two employees who supervised sales reps, such as how sales reps were paid if not via a commission structure that rewarded them for making auto-ship sales.

802. Redwood sales representatives were expected to meet a minimum level of sales.	Melendez Dec. (PX-35), p. 4, ¶ 15. Walker Dec. (PX-32), p. 13, ¶ 57. Garcia Dec. (PX-34), p. 3, ¶ 11 (representatives risked being fired if their sales were not high enough). Carranza Dec. (PX-33),	Admit
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	<p>p. 5, ¶ 22.</p> <p>Rodoracio Dec. (PX-36), p. 3, ¶ 12; p. 5, ¶ 21 (sales representatives risked being fired if they didn't meet their quotas; Eunjung fired her in part for failing to push staff to meet higher sales quotas).</p>	
<p>803. Jason and Eunjung Cardiff tracked the performance of individual sales representatives using charts that showed on a daily basis the number of total calls each representative handled and the number of sales they closed.</p>	<p>Melendez Dec. (PX-35), p. 5, ¶ 19 & p. 16-17 (Att. 2).</p> <p>See also Melendez Dec. (PX-35), p. 4, ¶ 17 (sent recordings of sales calls to the Cardiffs so they could monitor sales reps' performance).</p> <p>See also Walker Dec. (PX-32), p. 13, ¶ 57 (the Cardiffs regularly received audio recordings of sales representatives' calls).</p>	<p>Admit</p>

1	804. Eunjung Cardiff	Melendez Dec. (PX-35),	Admit
2	was concerned	p. 5, ¶ 19 & p. 18-36	
3	with sales reps who	(Atts. 3-5).	
4	closed a low		
5	percentage of		
6	potential sales and		
7	sometimes asked		
8	why one sales		
9	representative's		
10	numbers were		
11	lower than others'		
12	numbers.		
13	805. Jason Cardiff	Melendez Dec. (PX-35),	Admit
14	would often	p. 3, 4, ¶¶ 11, 15.	
15	announce bonuses		
16	for meeting or		
17	exceeding certain		
18	sales levels.		
19	806. Jason Cardiff	Garcia Dec. (PX-34), p.	Admit
20	would publicly	3, ¶ 10.	
21	congratulate sales		
22	representatives	See also Carranza Dec.	
23	who did well, and	(PX-33), p. 5-6, ¶ 22	
24	play recordings of	(Jason Cardiff would	
25	sales	sometimes offer bonuses	
26	representatives'	for the highest sales of	
27	phone calls with	the day or week).	
28	customers that he		

1	thought were good		
2	or bad examples.		
3	807. Jason Cardiff and	Walker Dec. (PX-32), p.	Admit
4	Eunjung Cardiff	13, ¶ 57.	
5	would have the call		
6	center supervisors	Melendez Dec. (PX-35),	
7	fire under-	p. 5, ¶ 20.	
8	performing		
9	representatives	Carranza Dec. (PX-33),	
10	who were not	p. 5, ¶ 22 (sales reps were	
11	meeting sales	fired for failing to make	
12	quotas.	sales quotas).	
13	808. Neither Redwood's	Walker Dec. (PX-32), p.	Defendants can neither
14	former Director of	13, ¶ 57.	admit or deny that fact.
15	Operations nor its		
16	former Customer	Melendez Dec. (PX-35),	
17	Service Relations	p. 4, ¶ 17.	
18	and Sales		
19	Supervisor is	See also Carranza Dec.	
20	aware of any sales	(PX-33), p. 4, ¶ 14.	
21	representatives		
22	being disciplined		
23	for failing to		
24	disclose the auto-		
25	ship program.		
26	FTC Response to SUF 808: Defendants do not dispute that neither Redwood's		
27	former Director of Operations nor its former Customer Service Relations and		
28	Sales Supervisor is aware of any sales representatives being disciplined for		

failing to disclose the auto-ship program.

809. Sales representatives did not always tell customers that they could cancel the autoship by calling customer service.

Garcia Dec. (PX-34), p. 2-3, ¶ 9.

Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. *Id.* Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶89.

FTC Response to SUF 809: Defendants do not specifically deny that sales representatives did not always tell customers that they could cancel the autoship by calling customer service. Their objection states that there was a “strict policy” to disclose auto-ship programs, which does not address the behavior of sales representatives on a day-to-day basis; further, disclosure of an auto-ship program is not equal to an explanation of how to cancel that program. Plaintiff has offered specific testimony from former employees who were in a position to see and hear what sales representatives were doing. Whether or not the auto-ship sales stopped after July 2018 is not relevant to liability.

The behavior of Defendants' employees in failing to explain to consumers how they could cancel enrollment in auto-ship is relevant to Defendants' liability for injunctive and monetary relief.

810. Defendants' sales representative did not disclose the auto-ship enrollment to the FTC investigator when he made an undercover purchase by phone on June 12, 2017.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 13, ¶ 33 & Dkt. 10, p. 150-161 (Att. 069).	Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to
811. The FTC's investigator was automatically enrolled in an autoship program when he ordered TBX-FREE over the telephone, despite having clearly stated during that conversation that he wanted only one single box.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 13, ¶ 33 & Dkt. 10, p. 150, 155, ln. 18 – 156, ln. 5 (Att. 069); Dkt. 7, p. 14-15, ¶¶ 37-39 & Dkt 10, p. 189-193 (Atts. 073-75).	the terms and conditions of the program. <i>Id.</i> Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶89.

FTC Response to SUF 810-811: Defendants do not address, much less dispute, the transcript evidence that their sales representative did not disclose the auto-ship enrollment to the FTC investigator when he made an undercover purchase by phone on June 12, 2017, or that the FTC’s investigator was automatically enrolled in an autoship program when he ordered TBX-FREE over the telephone, despite having clearly stated during that conversation that he wanted only one single box. The substance of their general denial consists of irrelevant argument that should be disregarded.

This deceptive sales practice is relevant to Defendants’ liability for injunctive and monetary relief.

812. The FTC investigator’s experience was not unique: consumers were enrolled in autoship programs even when they made it clear that they wanted only a one-time order and Defendants’ representatives told them they would not get automatic shipments.	See Walker Dec. (PX-32), p. 13, ¶ 58 (many customers complained they had been told they would not get automatic shipments but were signed up anyway). Garrett Dec. (TRO PX-15), Dkt. 211, p. 11, ¶¶ 2-3 (told sales representative he did not want auto-ship and representative confirmed his preference). See also Cooper Dec.	Object to Danielle Walker’s testimony on this issue as hearsay. Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. Ex. A, Declaration of Jason Cardiff ¶87. The FTC
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1	(TRO PX-12), Dkt. 211,	could only find 4 people
2	p. 5, ¶¶ 3-4 (made it clear	to give testimony on this
3	he was only placing a	issue out of over 200,000
4	one-time order).	people who acquired
5		Redwood products.
6	See also Sands 1st Dec.	Object as to relevance,
7	(TRO PX-1), Dkt. 7, p.	the autoship program was
8	21, 23, 24, ¶¶ 66, 67, 75	no longer in existence as
9	& Dkt. 10-1, p. 31(Att.	of July, 2018. Ex. A,
10	099).	Declaration of Jason
11		Cardiff at ¶89.
12	See also Brown Dec.	
13	(TRO PX-24), Dkt. 211,	
14	p. 28, ¶ 2 (sales	
15	representative said she	
16	could only buy with auto-	
17	ship program but it could	
18	be cancelled within 30	
19	days; consumer called	
20	and cancelled but was	
21	subsequently billed for	
22	another order).	

FTC Response to SUF 812: Defendants do not dispute that the FTC investigator's experience was not unique: consumers were enrolled in autoship programs even when they made it clear that they wanted only a one-time order and Defendants' representatives told them they would not get automatic shipments. The testimony of Danielle Walker is not hearsay because it is offered to show that defendants were aware of these problems. The defendants object

that it was the company’s “strict policy” to disclose auto-ship programs. As discussed above, there is no further description of this “strict policy,” including what it looked like, how it was communicated, and how (if ever) it was enforced. This would be especially important in light of defendants’ practice of giving bonuses to sales representatives based on their sales. Whether or not a straight sale option was available in theory does not address the specific factual allegations that form the basis of the undisputed fact. The general denial, which does not specifically address the undisputed fact, is not sufficient to raise a genuine issue of material fact. Whether or not the auto-ship program continued after July 2018 is not relevant to liability. The fact that customers were signed up for auto-ship programs without their knowledge is relevant to the defendants’ individual liability for injunctive and monetary relief.

813. Defendants did not provide clear and conspicuous disclosure of all material terms of the transaction on their websites prior to obtaining the consumer’s billing information.	Walker Dec. (PX-32), p. 13, ¶ 59. E.g., Fromal Dec. (TRO PX-11), Dkt. 211, p. 2, ¶ 2 (nothing on TBX-FREE website made her suspect she was giving permission for 15 additional credit card charges totaling \$961). Rosen Dec. (TRO PX-13), Dkt. 211, p. 7, ¶ 2 (no reason to believe she would be enrolled in	Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. Ex. A, Declaration of Jason Cardiff ¶87. Object as to relevance, the autoship program was
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1		auto-shipment program).	no longer in existence as
2			of July, 2018. Ex. A,
3		Reynolds Dec. (TRO PX-	Declaration of Jason
4		17), Dkt. 211, p. 14, ¶ 2	Cardiff ¶89.
5		(no recollection of	Object as to lack of
6		anything in purchase	timeframe and relevance.
7		details that gave reason	Redwood's products
8		to believe it would be an	pages were redesigned in
9		autoship program).	or about February, 2018.
10			Ex. A, Declaration of
11		Roberts Dec. (TRO PX-	Jason Cardiff ¶¶7, 9, and
12		23), Dkt. 211, p. 25, ¶ 3	46-53.
13		(saw nothing on website	
14		or at check-out that said	
15		she was giving	
16		permission to charge her	
17		for more than just one	
18		purchase).	
19			
20		Jones Dec. (TRO PX-25),	
21		Dkt. 211, p. 29, ¶ 3	
22		(TBX-FREE website did	
23		not mention additional	
24		shipments or recurring	
25		charges).	
26			
27		Fatch Dec. (TRO PX-26),	
28		Dkt. 211, p. 30, ¶ 4	

	(nothing on the TBX-FREE website that would lead someone to believe additional orders or charges would follow). SUF 814-816. See also SUF 780-781.	
<p>FTC Response to SUF 813: Defendants do not specifically dispute that they did not provide clear and conspicuous disclosure of all material terms of the transaction their websites prior to obtaining the consumer’s billing information. Their general denial involves the purported availability of a straight sales option and a vague and unexplained “strict policy” of disclosing the auto-ship program (all without reference to what was or was not disclosed on their websites). These general denials miss the mark and fail to address the undisputed fact with any particularity and are therefore not sufficient to raise a genuine issue of material fact. Whether or not defendants changed the auto-ship disclosure in February 2018 is not relevant to liability. The defendants’ failure to clearly disclose their auto-ship program in their online sales platform before February 2018 is relevant to defendants’ individual liability for injunctive and monetary relief.</p>		
814. When an FTC investigator made an online undercover purchase of TBX-FREE in June 2017, Defendants’	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 15, ¶ 42, & Dkt. 10, p. 229 (Att. 078).	Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶89. Object as to lack of

1	website had no		timeframe and relevance.
2	disclosure about		Redwood's products
3	automatic		pages were redesigned in
4	enrollment in a		or about February, 2018.
5	continuity plan.		Ex. A, Declaration of
6	815. Defendants did not	Sands 1st Dec. (TRO PX-	Jason Cardiff ¶¶7, 9, and
7	disclose the	1), Dkt. 7, p. 15, ¶ 42, &	46-53.
8	negative option	Dkt. 10, p. 229 (Att.	
9	feature of their	078).	
10	autoship continuity		
11	program before the	Sands 1st Dec. (TRO PX-	
12	FTC's investigator	1), Dkt. 7, p. 16-17, ¶¶	
13	provided his billing	47, 48 & Dkt. 10, p. 256-	
14	information during	258 (Atts. 083, 084).	
15	an online purchase		
16	of TBX-FREE, and		
17	they enrolled him		
18	without obtaining		
19	his express		
20	informed consent		
21	to incur additional		
22	charges.		
23	FTC Response to SUF 814-815: Defendants do not specifically dispute that		
24	when an FTC investigator made an online undercover purchase of TBX-FREE in		
25	June 2017, Defendants' website had no disclosure about automatic enrollment in		
26	a continuity plan, or that Defendants did not disclose the negative option feature		
27	of their autoship continuity program before the FTC's investigator provided his		
28	billing information during an online purchase of TBX-FREE, and they enrolled		

him without obtaining his express informed consent to incur additional charges. Instead, they object as to “timeframe,” relevance, they claim that the auto-ship program was no longer in existence after July 2018, and they claim that the website was re-designed in February 2018. First, the timeframe is clear: The FTC investigator purchased TBX-FREE from defendants’ website in June 2017 and the Complaint states that the relevant time period is 2015-2018 (Dkt. 1 at 15, ¶ 36). Second, the undisputed fact relates to deceptive practices during the complaint period, whether the practices continued after February 2018 or not. Third, to the extent defendants claim that they re-designed the website in February 2018, their declaration do not address, either generally or specifically, any re-design of the autoship disclosure or default. Finally, whether or not defendants stopped selling auto-ship in July 2018 is irrelevant to liability. The deceptive sales practice described is relevant to defendants’ individual liability for injunctive and monetary relief.

816. Many consumers had similar experiences when they purchased Redwood oral film strips online, believing they were placing a one-time order.	E.g., Fromal Dec. (TRO PX-11), Dkt. 211, p. 2, ¶ 2 (nothing on TBX-FREE website made her suspect she was giving permission for 15 additional credit card charges totaling \$961). Rosen Dec. (TRO PX-13), Dkt. 211, p. 7, ¶ 2 (no reason to believe she would be enrolled in auto-shipment program).	Deny as to “many.” The FTC has evidence of nine consumers that encountered this problem out of roughly 200,000 consumers who purchased Redwood products. Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place
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1		anyone on autoship
2		unless the customer was
3	Reynolds Dec. (TRO PX-	fully aware of the
4	17), Dkt. 211, p. 14, ¶ 2	autoship and agreed to
5	(no recollection of	the terms and conditions
6	anything in purchase	of the program. <i>Id.</i> The
7	details that gave reason	FTC could only find 4
8	to believe it would be an	people to give testimony
9	autoship program).	on this issue out of over
10		200,000 people who
11	Boatright Dec. (TRO PX-	acquired Redwood
12	21), Dkt. 211, p. 22, ¶¶ 4-	products.
13	5 (ordered one shipment	Object as to relevance,
14	of TBX-FREE and	the autoship program was
15	discovered after receipt	no longer in existence as
16	of second shipment that	of July, 2018. Ex. A,
17	she had been enrolled in	Declaration of Jason
18	autoship program).	Cardiff at ¶89.
19		
20	Roberts Dec. (TRO PX-	
21	23), Dkt. 211, p. 25, ¶ 3	
22	(saw nothing on website	
23	or at check-out that said	
24	she was giving	
25	permission to charge her	
26	for more than just one	
27	purchase).	
28	Jones Dec., (TRO PX-	

1	25), Dkt. 211, p. 29, ¶ 3	
2	(TBX-FREE website did	
3	not mention additional	
4	shipments or recurring	
5	charges).	
6		
7	Fatch Dec., (TRO PX-	
8	26), Dkt. 211, p. 30, ¶ 4	
9	(nothing on the TBX-	
10	FREE website that would	
11	lead someone to believe	
12	additional orders or	
13	charges would follow).	

FTC Response to SUF 816: While Defendants dispute the use of the word “many,” they do not specifically dispute that consumers had similar experiences when they purchased Redwood oral film strips online, believing they were placing a one-time order. Here Defendants again interpose the argument that straight sales were always available as an option and that Redwood had a purported “strict policy” against selling auto-ship programs without permission. Defendants do not explain how the existence of a “strict policy” or a straight sale option would have any bearing on the presentation of their website and the disclosures (or lack thereof) contained therein. This general denial fails to address the fact with any specificity and is insufficient to raise a genuine issue of material fact. Whether or not the auto-ship program ceased in July 2018 is not relevant to liability.

Defendants’ deceptively crafted website failed to adequately advise customers of the auto-ship program and is relevant to their liability for injunctive and

monetary relief.

<p>817. The majority of customer service calls were complaints from consumers who had been put on the autoship without their authorization and charged for additional product they had not ordered.</p>	<p>Walker Dec. (PX-32), p. 18, ¶ 79.</p> <p>Melendez Dec. (PX-35), p. 4, ¶ 16 (majority of complaints were about auto-ship and unauthorized charges).</p> <p>Garcia Dec. (PX-34), p. 1, ¶ 5 (about 80% of customer complaints related to unauthorized and unwanted auto-ship charges).</p> <p>Wu Dec. (PX-37), p. 2, ¶ 11 (customers complained about being placed on autoship, which was the default order method for Redwood products).</p> <p>Carranza Dec. (PX-33), p. 4, ¶ 14.</p>	<p>Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. <i>Id.</i> The FTC could only find 4 people to give testimony on this issue out of over 200,000 people who acquired Redwood products.</p> <p>Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶89.</p>
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	Rodoracio Dec. (PX-36), p. 3, ¶ 13 (unauthorized autoships were the primary customer complaint).	
<p>FTC Response to SUF 817: Defendants do not specifically deny that the majority of customer service calls were complaints from consumers who had been put on autoship without their authorization and charged for additional product they had not ordered. In their general denial, Defendants again rely on the existence of a purported “strict policy” requiring disclosure of the auto-ship programs and the availability of a straight sale option. Neither of these denials addresses the detailed descriptions offered by former employees relating their day-to-day experiences handling customer complaints. The defendants state no basis of knowledge to contradict their former employees’ testimony, nor do they offer an alternative description of the majority of customer calls. Whether or not the auto-ship program ceased in July 2018 is not relevant to liability.</p> <p>The fact that consumers were complaining about being placed on autoship without their authorization and being charged for product they did not order is relevant to Defendants’ liability for injunctive and monetary relief.</p>		
818. Many customers only learned that they had been signed up for auto-ship after they received the automated second shipment of	Garcia Dec. (PX-34), p. 2-3, ¶ 9. Cooper Dec. (TRO PX-12), Dkt. 211, p. 5, ¶ 4 (received email roughly one month after initial order of Eupepsia Thin	Deny as to “many.” The FTC has evidence of nine consumers that encountered this problem out of roughly 200,000 consumers who purchased Redwood products.

1	product or	saying that he was being	Object as to relevance,
2	discovered another	charged \$49.95 for	the autoship program was
3	charge or debit for	another order).	no longer in existence as
4	product they had		of July, 2018. Ex. A,
5	not ordered.	Rosen Dec. (TRO PX-	Declaration of Jason
6		13), Dkt. 211, p. 7, ¶ 3	Cardiff ¶89.
7		(received second order of	
8		TBX-FREE	
9		approximately one month	
10		after initial order, and	
11		discovered that \$49.95	
12		had been removed from	
13		checking account).	
14			
15		Harrell-Cox Dec. (TRO	
16		PX-14), Dkt. 211, p. 9, ¶¶	
17		4-5 (one month after	
18		initial charge, Redwood	
19		took an additional \$89.95	
20		from her bank account	
21		and she called the	
22		company to find out	
23		why).	
24			
25		Garrett Dec. (TRO PX-	
26		15), Dkt. 211, p. 11, ¶¶ 2-	
27		3 (one month after initial	
28		\$169.90 order, he noticed	

1 another charge for
2 \$169.90 on his credit
3 card).

4
5 Reynolds Dec. (TRO PX-
6 17), Dkt. 211, p. 14, ¶¶ 2-
7 4 (second shipment
8 arrived about a month
9 after initial order, along
10 with additional
11 withdrawal of \$49.95
12 from his bank account;
13 same thing happened a
14 month later).

15
16 Boatright Dec. (TRO PX-
17 21), Dkt. 211, p. 22, ¶ 4
18 (received a second
19 shipment of TBX-FREE
20 one month after the first
21 one, and discovered a
22 credit card charge for it).

23
24 Jones Dec., (TRO PX-
25 25), Dkt. 211, p. 29, ¶ 4
26 (one month after initial
27 order, she saw a debit
28 charge from Redwood on

1	her bank statement;	
2	received a second	
3	package a few days	
4	later).	
5		
6	Fatch Dec., (TRO PX-	
7	26), Dkt. 211, p. 30, ¶ 3	
8	(discovered he had been	
9	enrolled in auto-ship	
10	when he received a	
11	second order of TBX-	
12	FREE about a month	
13	after initial order).	

FTC Response to SUF 818: While Defendants take issue with the term “many,” they do not deny that nine customers who submitted declarations only learned that they had been signed up for auto-ship after they received the automated second shipment of product or discovered another charge or debit for product they had not ordered. Whether or not the auto-ship program ceased in July 2018 is not relevant to liability.

The fact that consumers were only learning they had been placed on auto-ship after receiving their second shipment is relevant to whether there were adequate disclosures of the auto-ship program, and consequently relevant to Defendants’ liability for injunctive and monetary relief.

25	819. Periodically,	Walker Dec. (PX-32), p.	Deny. Redwood had
26	customer service	17, ¶ 75.	customer service
27	representatives		representatives working
28	would not be able	Cooper Dec. (TRO PX-	over 44 hours during the

1	to answer all of the	12), Dkt. 211, p. 5, ¶ 4	week, and up to 12
2	incoming phone	(unsuccessful reaching	representatives working
3	calls, so consumers	Redwood using customer	at a time. Ex. A, Jason
4	had difficulty	service phone number).	Cardiff Declaration ¶116.
5	cancelling		
6	autoships or	Rosen Dec. (TRO PX-	
7	requesting refunds.	13), Dkt. 211, p. 7, ¶ 3	
8		(made many unsuccessful	
9		attempts to reach	
10		Redwood).	
11			
12		Harrell-Cox Dec. (TRO	
13		PX-14), Dkt. 211, p. 8-9,	
14		¶¶ 5-6 (customer service	
15		kept her on “hold” for	
16		more than two hours;	
17		unable subsequently to	
18		reach customer service	
19		by phone).	
20			
21		Reynolds Dec. (TRO PX-	
22		17), Dkt. 211, p. 14, ¶¶ 4-	
23		5 (stayed on the line for	
24		as much as an hour each	
25		time trying to reach	
26		customer service).	
27			
28		Grossman Dec. (TRO	

PX-20), Dkt. 211, p. 20-21, ¶ 4 (spent hours trying to get through to Redwood, including waiting on “hold” for more than an hour several times.

Roberts Dec. (TRO PX-23), Dkt. 211, p. 25-26, ¶¶ 4-5 (difficulty getting through to customer service; was told twice she would get a return call but none came).

See also Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 23, ¶ 68 & Dkt. 10-1, p. 30 (Att. 098).

Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 23-24, ¶¶ 69-75 & Dkt. 10-1, p. 31 (Att. 099).

Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 25-27, ¶¶

1		76-84 & Dkt. 10-1), p. 32	
2		(Att. 100).	
3	FTC Response to SUF 819: Defendants do not specifically dispute that		
4	periodically, customer service representatives would not be able to answer all of		
5	the incoming phone calls, so consumers had difficulty cancelling autoships or		
6	requesting refunds. Instead, they generally deny this without any reference to		
7	customer or employee experiences, saying instead that they had employees		
8	working 44 hours out of the week. These general assertions without any		
9	explanation regarding the difficulty experienced by customers reaching		
10	Defendants is not sufficient to raise a genuine issue of material fact, especially in		
11	light of the FTC's consistent evidence from both consumers and former		
12	Redwood employees. There is no explanation of what occurred during the hours		
13	when they had no phone coverage. Defendants also offer no explanation for how		
14	they handled calls that were received during busy times of day, including		
15	whether provision was made for customers to leave voice mail messages, or even		
16	whether the company made efforts to return missed messages, including how that		
17	was done.		
18	820. Jason and Eunjung	Walker Dec. (PX-32), p.	Admit
19	Cardiff received	13, ¶¶ 59, 60 (customer	
20	regular reports of	complaints about the auto-	
21	sales and customer	ship program were	
22	service call data,	discussed at regular	
23	including the	management meetings).	
24	reasons for		
25	cancellations or		
26	refund requests.		
27	821. Even when	Roberts Dec. (TRO PX-	Deny as to often. FTC
28	consumers	23), Dkt. 211, p. 25-26,	has two declarations out

1	successfully	¶¶ 4-7.	of roughly 200,000
2	reached Redwood’s		consumers who
3	customer service to	Brown Dec. (TRO PX-	purchased Redwood
4	cancel their	24), Dkt. 211, p. 28, ¶¶ 3-	products.
5	enrollment in	4.	Defendants did offer a
6	autoship plans,		money-back guarantee
7	Defendants often		and over 16,000 people
8	continued sending		received refunds from
9	additional		Redwood. Dkt. 7 at 155-
10	shipments and		165.
11	placing more		Redwood was very
12	unauthorized		flexible with its Refund
13	charges on		policy, and would often
14	consumers’ cards.		refund money to people
15			after the 30 days had
16			passed. Exhibit 1,
17			Declaration of Jason
18			Cardiff at __.
19	FTC Response to SUF 821: Although defendants dispute the use of the word		
20	“often,” they do not deny that even when consumers successfully reached		
21	Redwood’s customer service to cancel their enrollment in autoship plans,		
22	Defendants continued sending additional shipments and placing more		
23	unauthorized charges on consumers’ cards. Defendants’ general assertions		
24	regarding the number of people refunded, their money-back guarantee, and their		
25	purported “flexible” refund policy are irrelevant to whether consumers were able		
26	to easily and successfully cancel their autoship enrollments. These general		
27	assertions do not raise a genuine issue of material fact.		
28	822. Defendants did not	Walker Dec. (PX-32), p.	Deny, Defendants never

1	obtain written	14, ¶ 63.	took money directly from
2	authorization from		consumer bank accounts.
3	debit card	Melendez Dec. (PX-35),	Ex. A, Jason Cardiff
4	customers to make	p. 3, ¶ 12.	Declaration at ____.
5	recurring electronic		
6	debits from their	Carranza Dec. (PX-33),	
7	bank accounts.	p. 2, ¶ 9.	
8			
9		Rodoracio Dec. (PX-36),	
10		p. 2, ¶ 7 (no special	
11		authorization was	
12		required before debit card	
13		customers were put on	
14		auto-ship).	
15			
16		Rosen Dec. (TRO PX-	
17		13), Dkt. 211, p. 7, ¶ 3.	
18			
19		Harrell-Cox Dec. (TRO	
20		PX-14), Dkt. 211, p. 9, ¶	
21		3.	
22			
23		Reynolds Dec. (TRO PX-	
24		17), Dkt. 211, p. 14, ¶ 3.	
25			
26		Jones Dec. (TRO PX-25),	
27		Dkt. 211, p. 29, ¶ 4.	
28			

	<p>See also Fromal Dec. (TRO PX-11), Dkt. 211, p. 3-4, ¶¶ 4-5 (returned home after extensive work travel to find multiple charges from checking account that resulted in bounced checks and overdraft fees).</p>	
<p>FTC Response to SUF 822: Defendants do not dispute that they did not obtain written authorization from debit card customers to make recurring electronic debits. Rather, without citing any basis, they dispute that debits were taken from customers' bank accounts. The Court may take judicial notice that debit cards are linked to customers' bank accounts and that a withdrawal occurs when the debit card is charged. Consumers whose bank withdrawals exceed their bank deposits may incur overdraft charges.</p>		
<p>823. Defendants did not obtain consumers' express informed consent before charging them for recurring shipments.</p>	<p>SUF 783, 785-786, 810-818.</p>	<p>Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration at __. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions</p>

		<p>of the program. Ex. A, Declaration of Jason Cardiff ¶111. The FTC could only find 4 people to give testimony on this issue out of over 200,000 people who acquired Redwood products. Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶89.</p>
<p>FTC Response to SUF 823: Defendants do not specifically dispute that they did not obtain consumers’ express informed consent before charging them for recurring shipments and have offered no details or evidence showing if and how they obtained consent from consumers to charge them on an ongoing basis. The Cardiffs’ extraneous narrative is irrelevant argument and should be disregarded.</p> <p>Defendants’ failure to obtain express informed consent before charging customers for recurring shipments is relevant to their liability for injunctive and monetary relief.</p>		
<p>824. Defendants did not provide a simple mechanism for the consumer to stop recurring charges</p>	<p>SUF 748, 819.</p>	<p>Deny we had auto stop with the click of a button and we texted and email customers prior to any charging of new orders.</p>

1	from its autoshop		Ex. A, Jason Cardiff
2	programs.		declaration ¶88a-b.
3	FTC Response to SUF 824: The Cardiffs claim that they had “auto stop with		
4	the click of a button,” but the cited paragraphs in Jason Cardiff’s declaration do		
5	not mention an “auto stop” or button-click option to stop recurring charges. Their		
6	cited evidence does not support their assertion. The Cardiffs offer no evidence of		
7	an easy cancellation mechanism, and if even they did text and email customers		
8	prior to charging them, which they do not establish by reference to any evidence,		
9	advance warning of a charge is not equal to providing a simple mechanism to		
10	avoid that charge.		
11	825. Defendants made	SUF 815, 818, 822.	Deny. Defendants never
12	electronic funds		transferred funds from
13	transfers from		consumers bank
14	consumers’ bank		accounts. Ex. A, Jason
15	accounts without		Cardiff Declaration ¶112.
16	having provided		
17	those consumers		
18	with a copy of their		
19	written		
20	authorization for		
21	such transfers		
22	because no such		
23	authorization		
24	existed.		
25	FTC Response to SUF 825: Defendants admit other facts (see, e.g., FTC SUF		
26	744, 842) showing that they accepted debit card charges, which the Court may		
27	take judicial notice are connected to bank accounts. Their general denial does not		
28	provide any detail or evidence showing a process or examples of Defendants		

both obtaining and providing a copy of written authorizations from and to consumers who made purchases with debit cards.

B. Chargebacks

FTC Fact	FTC Citation	Cardiff Admit/Objection
826. Defendants' merchant accounts had high chargebacks (i.e., credits to customers' credit cards) because many customers complained to their credit card companies about unauthorized auto-ship charges or inability to get refunds for their purchases.	Walker Dec. (PX-32), p. 18, ¶ 79. Melendez Dec. (PX-35), p. 8-9, ¶ 31 (customers who were upset about unauthorized chages and unpaid refunds often filed disputes with their credit card companies). Carranza Dec. (PX-33), p. 7, ¶ 28 (customers who were upset about unauthorized charges or not getting promised refunds would sometimes dispute credit card charges). Rodoracio Dec. (PX-36), p. 3, ¶ 13; p. 5, ¶ 20.	Deny. No processing companies ended their relationship with Redwood because of chargeback rates. In fact, none of the processing companies told me or anyone else that the chargeback rates were too high or that they were concerned about the chargeback rates. Ex. A, Jason Cardiff Declaration ¶¶106-107. Redwood was never penalized by any merchant accounts because of problems with chargebacks. <i>Id.</i>

	<p>Ducklow Dec. (TRO PX-3), Dkt. 8, p. 3-5, ¶¶ 5, 11 & p. 7-8 (Att. A & B).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 62, ¶ 176 & Att. 24-12, p. 8 (Att. 208) (“the chargebacks were crazy high levels”).</p> <p>Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 28-34, ¶¶ 90-92, 94, 98, 100, 101 & Dkt. 10-1, p. 42-43, 53-54 (Atts. 105-07, 110).</p>	
<p>FTC Response to SUF 826: Defendants do not dispute that they had high chargebacks due to consumers complaining about autoship and the inability to get refunds. Their general denial that no “processing companies” terminated relationships with Defendants due to high chargebacks does not address the testimony of four former employees, email correspondence, and internal records kept by Defendants’ former merchant processors, which show that high chargebacks were a known concern. Whether merchant processors terminated Defendants’ accounts for this reason is irrelevant to this fact. The Cardiffs also do not address the cited email evidence showing that Jason Cardiff was informed that Defendants’ chargebacks were “crazy high.”</p>		
<p>827. Redwood would use the packing</p>	<p>Melendez Dec. (PX-35), p. 8-9, ¶ 31 & p. 10 (Att.</p>	<p>Admit</p>

1	slips included with	1).	
2	customer orders to		
3	challenge	Rodoracio Dec. (PX-36),	
4	chargebacks.	p. 5, ¶ 20.	
5	828. Jason Cardiff	Carranza Dec. (PX-33),	Admit
6	wanted chargeback	p. 7, ¶ 28-29.	
7	rates to be below		
8	1%.	See also Melendez Dec.	
9		(PX-35), p. 8-9, ¶ 31	
10		(Jason Cardiff was happy	
11		when chargebacks were	
12		low).	
13	829. As of 2018, both	Ducklow Dec. (TRO PX-	Admit
14	Visa and	3), Dkt. 8, p. 3-4, ¶ 7; p.	
15	Mastercard used a	5, ¶ 12.	
16	chargeback-to-		
17	transaction ratio of		
18	1% to decide when		
19	a merchant should		
20	be placed on a		
21	monitoring		
22	program because of		
23	an excessive level		
24	of customer		
25	disputes.		
26	830. During the period	Ducklow Dec. (TRO PX-	Deny. No processing
27	from December	3), Dkt. 8; p. 3, ¶ 5; and	companies ended their
28	2015 through	p. 3-4, ¶ 11 & p. 7-8 (Att.	relationship with

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	February 2018 for Visa and from January 2016 through March 2018 for Mastercard, Defendants' chargeback ratios were regularly well above 1%.	A, B). See also Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 32-33, ¶ 100 (December 2017 memorandum by Vantiv noting the "generally acceptable rate of 1.00% CB # to Sales # Ratio" and that Redwood had historically been above that rate, "indicating potential issues with the product, customer service, and/or marketing.").	Redwood because of chargeback rates. In fact, none of the processing companies told me or anyone else that the chargeback rates were too high or that they were concerned about the chargeback rates. Ex. A, Jason Cardiff Declaration ¶¶106-107. Redwood was never penalized by any merchant accounts because of problems with chargebacks. <i>Id.</i>
17 18 19 20 21 22 23 24 25 26 27 28	831. During the period from December 2015 through February 2018 for Visa and from January 2016 through March 2018 for Mastercard, Defendants' chargeback rates exceeded 10% for	Ducklow Dec. (TRO PX-3), Dkt. 8; p. 3, ¶ 5; and p. 3-4, ¶ 11 & p. 7-8 (Att. A, B).	

1	some of the banks		
2	handling		
3	Defendants’		
4	merchant accounts.		

FTC Response to SUF 830-831: Defendants do not dispute that during the period from December 2015 through February 2018 for Visa and from January 2016 through March 2018 for Mastercard, Defendants’ chargeback ratios were regularly well above 1%, or that during the period from December 2015 through February 2018 for Visa and from January 2016 through March 2018 for Mastercard, Defendants’ chargeback rates exceeded 10% for some of the banks handling Defendants’ merchant accounts. Instead they generally deny this arguing that they never lost a merchant account because of chargebacks or paid penalties as a result of high chargebacks. Although not relevant to these undisputed facts, this is not true. Defendants lost their ability to transact credit card charges because of high chargeback rates several times. Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 28-34, ¶¶ 90-92, 94, 98, 100, 101 & Dkt. 10-1, p. 42-43, 53-54 (Atts. 105-07, 110). (“Decline Reason: Per Security Risk: One MID shows high chargebacks and the other was recently closed for being related to the MID with the chargebacks. LP would advise not moving forward with the new application due to the chargeback risk associated with this account.”) Dkt. 7, p. 27-28, ¶ 90.

22	832. Merchant banks	Rodoracio Dec. (PX-36),	Deny, Redwood was
23	would impose	p. 3,	never penalized by
24	penalties on	¶ 13 (when chargebacks	merchant banks. Ex. A,
25	Redwood because	went up, the cost of	Jason Cardiff Declaration
26	of its high	processing went up).	¶107.
27	chargeback rates.		

FTC Response to SUF 832: Defendants generally disputes this fact without

reference to any specific company document and without any elaboration. Former employee April Rodoracio was primarily responding to customers' credit card banks to argue chargebacks. PX 35, p. 6, ¶ 20. This is the basis of her testimony regarding the effect of chargebacks on merchant card fees. The Jason Cardiff declaration offers no explanation for his basis of knowledge. These general denials are insufficient to raise genuine issues of material fact.

833. High chargebacks caused several of the corporate defendants' merchant accounts to be closed.	Walker Dec. (PX-32), p. 18, ¶ 79 & p. 729-752 (Atts. 118-125). See also Carranza Dec. (PX-33), p. 7, ¶ 30 (if the chargebacks got too high, merchants would close the account and keep the reserves). See also Rodoracio Dec. (PX-36), p. 3, ¶ 13 (Redwood could lose merchant accounts when chargebacks went up). Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 55 (Att. 11). Sands 1st Dec. (TRO PX-	Deny. No processing companies ended their relationship with Redwood because of chargeback rates. In fact, none of the processing companies told me or anyone else that the chargeback rates were too high or that they were concerned about the chargeback rates. Ex. A, Jason Cardiff Declaration ¶¶106-107. Redwood was never penalized by any merchant accounts because of problems with chargebacks. <i>Id.</i>
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	1), Dkt. 7, p. 28-34, ¶¶ 90-92, 94-98, 100, 101 & Dkt. 10-1, p. 41-44, 53-54 (Atts. 105-07, 110).	
<p>834. When existing merchant accounts were closed, the Cardiffs had to find new ones to process consumers' credit card orders.</p>	<p>Walker Dec. (PX-32), p. 18, ¶¶ 80-81.</p> <p>See Carranza Dec. (PX-33), p. 7, ¶ 30 (if the chargeback rate was growing on a particular merchant account, it would be time to line up a new account).</p> <p>Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 52-53 (Att. 9) (“We need to start to pen [sic] new merchant accounts again in order to cover us. We can use Identify llc [sic] for them. We should get chase and vantiv as well as any others we want.”); p. 54 (Att. 10) (“Team let’s get ready if we lose our vantiv account. We need</p>	

1		to get more chase	
2		payment tech accounts	
3		asap.”).	
4	835. The Cardiffs were	Walker Dec. (PX-32), p.	
5	aware of their	17-18, ¶¶ 76-77 (the	
6	chargeback	Cardiffs got real time	
7	problems.	reports of sales, and	
8		refund/chargeback	
9		numbers) & p. 728 (Att.	
10		117); p. 18, ¶ 79	
11		(merchant accounts were	
12		terminated on numerous	
13		occasions because of	
14		high chargebacks) & p.	
15		729-752 (Atts. 118-125);	
16		p. 18, ¶¶ 79-81 (the	
17		closure of merchant card	
18		processing accounts	
19		meant that the Cardiffs	
20		had to constantly look for	
21		and apply for new	
22		merchant accounts, and	
23		had to sign personal	
24		guarantees to obtain	
25		them) & p. 753-899	
26		(Atts. 126-135).	
27			
28		Carranza Dec. (PX-33),	

1 p. 7, ¶ 28 (Jason Cardiff
2 closely monitored
3 chargebacks).

4
5 Melendez Dec. (PX-35),
6 p. 9, ¶ 32 (told Jason
7 Cardiff that many
8 customers were disputing
9 charges with their credit
10 card companies because
11 they had been enrolled in
12 auto-ship without their
13 permission but he still
14 wanted to put customers
15 on auto-ship).

16
17 Sands 3rd Dec. (PX-51),
18 p. 3, ¶ 9 & p. 54 (Att. 10)
19 (Jason Cardiff sends
20 email saying “Team let’s
21 get ready if we lose our
22 vantiv account. We need
23 to get more chase
24 payment tech accounts
25 asap.”); p. 61-63 (Att. 16)
26 (“code red charge back
27 alert”).

28 **FTC Response to SUF 833-835:** Defendants generally dispute that chargebacks

were ever a problem, that they ever lost merchant accounts, or that they were ever told about these problems, however, records produced by their merchant processors tell a different story and the Cardiffs offer no explanation for why the Court should ignore contemporaneous email communications and the declarations of former employees specifically recounting Jason Cardiff's close attention to the issue of chargebacks. Defendants lost their ability to transact credit card charges because of high chargeback rates several times. Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 28-34, ¶¶ 90-92, 94, 98, 100, 101 & Dkt. 10-1, p. 42-43, 53-54 (Atts. 105-07, 110). ("Decline Reason: Per Security Risk: One MID shows high chargebacks and the other was recently closed for being related to the MID with the chargebacks. LP would advise not moving forward with the new application due to the chargeback risk associated with this account.") Dkt. 7, p. 27-28, ¶ 90. Documents produced by Defendants' merchant card processors include letters to Redwood and to Jason Cardiff reflecting concerns about chargeback history. In response to highly specific and detailed declarations and documents, Defendants offer no rebuttal to the testimony of their former employees, their own emails to employees asking them to look for new accounts (produced by Defendants to the FTC from their own business records), or to letters received from merchant processors that terminated Defendants' accounts. These denials are insufficient to raise a genuine issue of material fact.

836. Jason Cardiff was told by a payment processing consultant in May 2016 that one merchant account was being shut down because "The	Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 55 (Att. 11).	Admit
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1	chargebacks were		
2	[at] crazy high		
3	levels.”		
4	837. Jason Cardiff	Carranza Dec. (PX-33),	Deny. Jason Cardiff
5	instructed	p. 8, ¶ 30.	never lied or instructed
6	employees to use		anyone to lie about
7	fake websites to		websites or family
8	get approvals for		members in order to get
9	new merchant		new processing accounts.
10	accounts.		Most of Redwood’s
11	838. The Cardiffs used	Walker Dec. (PX-32), p.	processing was through
12	family members	18-19, ¶ 81.	the company Vantiv.
13	and friends of		Vantiv processed our
14	employees as	Sands 1st Dec. (TRO PX-	accounts from 2016 until
15	“strawmen” for	1), Dkt. 7, p. 36, ¶ 106 &	Vantiv closed the account
16	merchant card	Dkt. 13, p. 26-32 (Att.	in or March, 2018.
17	accounts so they	117).	Vantiv ended its
18	could continue		relationship with
19	processing sales.		Redwood because of the
20			FTC’s investigation. Ex.
21			A, Jason Cardiff
22			Declaration ¶108.
23	FTC Response to SUF 837-838: Defendants generally deny asking employees		
24	to use fake websites and strawmen to set up new merchant accounts. However,		
25	they do not directly confront or rebut the declaration testimony of Tracy		
26	Carranza, the employee who kept a spreadsheet of which fake websites obtained		
27	merchant approvals. Defendants also do not specifically address the declaration		
28	of the FTC investigator who reviewed copies of Defendants’ merchant		

applications and summarized them as follows: “The applications show various entities and owners, including Gerald Cardiff, father of Defendant and Redwood CEO Jason Cardiff, as well as current and former employees...” (TRO PX-1), Dkt. 7, p. 36, ¶ 106 & Dkt. 13, p. 26-32 (Att. 117). These general denials in the face of such detailed descriptions of Defendants’ activities are insufficient to raise a genuine issue of material fact.

C. Jason Cardiff’s “Straight Sales-to-Continuity” Initiative

FTC Fact	FTC Citation	Cardiff Admit/Objection
839. In January 2018, Jason Cardiff directed that brand new continuity orders should be created for customers who had previously made one-time “straight sale” purchases, so that their debit and credit cards could be charged again and going forward on a recurring basis.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 12, ¶ 30 & Dkt. 10, p. 90-149 (Atts. 038-068). Walker Depo., p. 128, ln. 25 – p. 129, ln. 9 (Sands 3rd Dec. (PX-51), p. 6, ¶ 27 & p. 1672, 1679-1680 (Att. 124)). Walker Dec. (PX-32), p.14-15, ¶¶ 65-67 & p. 657-718 (Atts. 83-114). See also Melendez Dec. (PX-35), p. 5-6, ¶¶ 21-22 & p. 37 (Att. 6) (“Per	Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. <i>Id.</i> The FTC could only find 4 people to give testimony on this issue out of over 200,000 people who acquired Redwood products.

	<p>Jason [t]he straight 1 month supply orders between December 21, 1017 [sic] – January 22, 2018 will be placed [on] continuity.”).</p> <p>Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 50-51, 57-58 (Atts. 8, 13).</p>	<p>Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶89.</p>
<p>840. Redwood did not contact these consumers or get their approval for additional charges.</p>	<p>Walker Dec. (PX-32), p. 15, ¶ 66.</p> <p>Walker Depo., p. 128, ln. 25 – p. 129, ln. 11 (Sands 3rd Dec. (PX-51), p. 6, ¶ 27 & p. 1672, 1679-1680 (Att. 124)).</p> <p>Chesko Dec. (TRO PX-22), Dkt. 211, p. 24, ¶¶ 2-4 (ordered TBX-FREE in March or April 2017; additional charge placed on credit card in April 2018).</p> <p>McKinney Dec. (TRO</p>	

1	PX-28), Dkt. 211, p. 32,	
2	¶¶ 2-4 (ordered TBX-	
3	FREE in January 2017;	
4	additional debit	
5	discovered in April	
6	2018).	
7		
8	Basford Dec. (TRO PX-	
9	29), Dkt. 211, p. 33, ¶¶ 2-	
10	3 (ordered TBX-FREE in	
11	October 2017; additional	
12	charge placed on credit	
13	card in March 2018).	
14		
15	Frantz Dec. (TRO PX-	
16	27), Dkt. 211, p. 31, ¶¶ 2-	
17	3 (additional charge	
18	placed on credit card in	
19	April 2018, months after	
20	placing a one-time	
21	order).	
22	FTC Response to SUF 839-840: The Cardiffs' general denial does not create a	
23	genuine dispute of material fact in the face of specific testimony by former	
24	employees who carried out his instructions, and documentary evidence	
25	consisting of internal Redwood emails, including emails to Jason Cardiff with	
26	the subject line containing a variation of the phrase, "Straight Sales Placed On	
27	Continuity," and an email saying, "Per Jason The straight sale 1 month supply	
28	orders between December 21, 1017 [sic] – January 22, 2018 will be placed on	

continuity.” Dkt 428-3, p. 38. The Cardiffs’ general assertion that a straight sale option was always available does not respond to the emails sent by Jason Cardiff instructing his employees to “find and run 10 k a day line one” and “increase the year” to push through charges on stale cards. *Id.* at 73, 86. Defendants fail to confront any of the detailed testimony gathered from the witnesses who were present and took part in this conduct.

Defendants’ relevance objection is misplaced, as SUF 839-840 clearly state that the actions in question began in January 2018 and emails show that it continued for several months, which is within the date range of the Complaint.

The fact that the Cardiffs knew about this credit card fraud, as evidenced by their inclusion on emails about it (see, e.g., Dkt. 428-3, p. 81), and that Jason Cardiff instructed his employees to carry it out is relevant to their individual liability for injunctive and monetary relief.

841. Redwood staff processed hundreds of these unauthorized transactions each day, and reported their success and failure rates to Jason Cardiff and sometimes to Eunjung Cardiff.	Melendez Dec. (PX-35), p. 6, ¶ 23 & p. 37-96 (Att. 6). Walker Dec. (PX-32), p. 14-15, ¶¶ 65-66 & p. 661-680 (Atts. 85-94); p. 683 (Att. 96); p. 693 (Att. 101) for Jason Cardiff; and p. 697-704 (Atts. 104-106); p. 712 (Att. 110) for Eunjung Cardiff.	Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. <i>Id.</i> Object as to relevance,
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		the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶89.
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FTC Response to SUF 841: The Cardiffs’ general denial does not create a genuine dispute of material fact in the face of specific testimony by former employees who processed hundreds of unauthorized transactions daily and documentary evidence consisting of internal Redwood emails in which these employees reported to the Cardiffs how many customers they had attempted to convert to continuity and how many of those attempts were successful. E.g., Dkt. 428-3, p. 46-54. Defendants fail to confront any of the detailed testimony from the witnesses who were present and took part in this conduct.

Defendants’ relevance objection is misplaced, as SUF 841 discusses actions taken beginning in January 2018.

The fact that Defendants harvested former customers’ data to process new, unauthorized transactions and that the Cardiffs were involved in near daily email discussions about this deceptive and unfair activity is relevant to their individual liability for injunctive and monetary relief.

842. In some cases, the customers’ credit and debit cards had expired since their original orders had been placed.	Melendez Dec. (PX-35), p. 6, ¶ 23. Walker Dec. (PX-32), p. 15, ¶ 66. Walker Depo., p. 130, ln.	Admit.
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	3-15 (Sands 3rd Dec. (PX-51), p. 6, ¶ 27 & p. 1672, 1681 (Att. 124)).	
843. Jason Cardiff directed his employees to try changing the cards' expiration dates, to see if that would allow the new charges to be processed.	Melendez Dec. (PX-35), p. 6, ¶ 23. Walker Dec. (PX-32), p. 15, ¶ 66 & p. 694-695 (Att. 102) ("Increase the year"); p. 699-701 (Att. 105) ("I already said what to do about declines exp"). Walker Depo., p. 130, ln. 3-15 (Sands 3rd Dec. (PX-51), p. 6, ¶ 27 & p. 1672, 1681 (Att. 124)).	Deny. Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration at 87_. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the prograEx. A, Declaration of Jason Cardiff at 87. Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff at ____.

FTC Response to SUF 843: The Cardiffs' general denial does not create a genuine dispute of material fact in the face of specific testimony by former employees who participated in the straight-to-continuity initiative and documentary evidence consisting of internal Redwood emails from Jason Cardiff telling his employee to "Increase the year" on cards that could not be processed

because they had expired, and subsequently confirming that “I already said what to do about declines exp.” Dkt. 426-1, p. 111-112, 116-117 (Att. 102, 105). Again, Defendants fail to confront any of the detailed evidence gathered from the witnesses who were present and took part in this conduct.

Defendants’ relevance objection is misplaced, as SUF 843 discusses actions taken beginning in January 2018.

The fact that Jason Cardiff told his employees to increase the expiration date of cards on which they were attempting to run unauthorized charges is relevant to his individual liability for injunctive and monetary relief.

844. Jason Cardiff was impatient at the progress the staff was making at converting accounts from straight sales to continuity programs, and threatened to fire the person working on the project.	Walker Dec. (PX-32), p. 15, ¶ 67.	Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. <i>Id.</i>
845. Redwood staff continued converting straight-sale customers to continuity plans	Walker Dec. (PX-32), p. 15, ¶ 67. Melendez Dec. (PX-35), p. 6, ¶ 23.	Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason

1	and charging them		Cardiff ¶89.
2	without		
3	authorization until		
4	April 2018.		
5	FTC Response to SUF 844-845: The Cardiffs’ general denial does not directly		
6	dispute that Jason Cardiff threatened to fire the employee he had tasked with		
7	converting straight sales to continuity, or that the initiative lasted until April		
8	2018, and therefore fails to create a genuine dispute of material fact in the face of		
9	the specific testimony by former employees who carried out his instructions to		
10	convert straight sale customers to continuity.		
11			
12	Defendants’ relevance objection is misplaced, as SUF 844-855 discusses actions		
13	taken between January 2018 and April 2018.		
14			
15	The unauthorized charges that resulted from Jason Cardiff’s straight to continuity		
16	initiative are relevant to Defendants’ liability for injunctive and monetary relief.		
17	846. Redwood staff	Melendez Dec. (PX-35),	Object as to vague and
18	continued going	p. 6, ¶ 22.	confusing. Defendants
19	back to older and		can neither admit or deny
20	older orders, and		this fact.
21	ultimately		Deny. The straight sales
22	attempted to		option was always
23	convert all 2017		available. Ex. A, Jason
24	straight sale orders		Cardiff Declaration ¶87.
25	into new auto-ship		Redwood had a strict
26	orders.		policy to not place
27			anyone on autoship
28			unless the customer was

		fully aware of the autoship and agreed to the terms and conditions of the program. Id. Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶89.
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FTC Response to SUF 846: The Cardiffs’ general denial does not create a genuine dispute of material fact in the face of specific testimony by the former employee who carried out Jason Cardiff’s instructions, who stated that, “After we exhausted the list of straight sale orders from November 2017 through January 2018, we started processing even older orders. First we went back to August 2017, and ultimately we tried to convert all 2017 straight sale orders into new auto-ship orders.” Dkt. 428-3, p. 7, ¶ 22. This process is also reflected in the internal Redwood emails attached to her declaration, to which both Jason Cardiff and sometimes Eunjung Cardiff are copied.

Defendants’ relevance objection is misplaced, as SUF 846 discusses actions taken beginning in January 2018 and ending in April 2018 (see SUF 839, 845).

The unauthorized charges that resulted from Jason Cardiff’s straight to continuity initiative are relevant to Defendants’ liability for injunctive and monetary relief.

847. Defendants processed unauthorized	Walker Dec. (PX-32), p. 15, ¶ 67.	Deny. The straight sales option was always available. Ex. A, Jason
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1	charges for more	Sands 1st Dec. (TRO PX-	Cardiff Declaration at 87.
2	than 1,500	1), Dkt. 7, p. 10-11, ¶ 28	Redwood had a strict
3	consumers through	(Table 1) (at least 1,893	policy to not place
4	Jason Cardiff's	conversions).	anyone on autoship
5	straight-to-		unless the customer was
6	continuity		fully aware of the
7	initiative.		autoship and agreed to
8	848. Jason Cardiff told	Walker Dec. (PX-32), p.	the terms and conditions
9	his staff that they	14, ¶¶ 65-66 & p. 707-	of the program. Ex. A,
10	had to generate	710 (Att. 108) ("We still	Declaration of Jason
11	additional revenue	have to find and run 10 k	Cardiff at 87.
12	of \$10,000 each	a day").	Object as to relevance,
13	day from his		the autoship program was
14	straight-to-	Melendez Dec. (PX-35),	no longer in existence as
15	continuity	p. 6, ¶ 23 & p. 85 (Att.	of July, 2018. Ex. A,
16	initiative.	6).	Declaration of Jason
17			Cardiff a89 89.
18		Sands 3rd Dec. (PX-51),	
19		p. 3, ¶ 9 & p. 83-86 (Att.	
20		27).	
21	FTC Response to SUF 847-848: The Cardiffs' general denial does not create a		
22	genuine dispute of material fact in the face of specific testimony by former		
23	employees who carried out Jason Cardiff's instructions and documentary		
24	evidence consisting of Jason Cardiff's March 24, 2018 email stating that "we still		
25	have to find and run 10 k a day line one" in response to an employee informing		
26	him that changing the expiration year was not working. Dkt. 10, p. 138. The		
27	Cardiffs do not dispute the number of new orders that resulted from this		
28	initiative, which were calculated by the FTC's investigator based on Redwood's		

own spreadsheet records.

Defendants' relevance objection is misplaced, as these facts discuss actions taken from January to April 2018.

The unauthorized charges that resulted from Jason Cardiff's straight to continuity initiative and his control over the process are relevant to Defendants' liability for injunctive and monetary relief.

849. Jason Cardiff was not happy that more consumers had not been successfully converted to continuity programs.	Walker Dec. (PX-32), p. 15, ¶ 68. Melendez Dec. (PX-35), p. 6, ¶ 23 & p. 93-94 (Att. 6) (when she told Jason Cardiff that she was only able to convert 4 of the 204 orders on the list she had received the previous day, he replied "Better come up with something ASAP.") Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 83-86 (Att. 27).	Deny. The straight sales option was always available. Ex. A, Jason Cardiff Declaration ¶87. Redwood had a strict policy to not place anyone on autoship unless the customer was fully aware of the autoship and agreed to the terms and conditions of the program. Id. Object as to relevance, the autoship program was no longer in existence as of July, 2018. Ex. A, Declaration of Jason Cardiff ¶89. Jason Cardiff understood the auto-ship program to
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		be the most efficient way for the company to make money, but ultimately he wanted our customers to be happy and achieve the best possible results for them. If Redwood's products worked in a month, it was great that our product was able to help them. Id. ¶90.
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FTC Response to SUF 849: The Cardiffs' general denial does not create a genuine dispute of material fact in the face of specific testimony by former employees who carried out Jason Cardiff's instructions and documentary evidence consisting of Jason Cardiff's April 4, 2018 statement, "Better come up with something ASAP" when the employee working on the straight-to-continuity initiative told him that she had successfully converted only 4 of the 204 orders she had attempted. Dkt. 426-1, p. 132.

Defendants' relevance objection is misplaced, as the referenced email is dated April 4, 2018, and their remaining narrative should be disregarded as argument.

The Cardiffs' participation in and knowledge of this initiative is relevant to Defendants' liability for injunctive and monetary relief.

850. Consumer complaints and chargebacks increased after	Walker Dec. (PX-32), p. 15, ¶ 69.	Objection as to relevance. No processing companies ended their relationship with
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1	Redwood started		Redwood because of
2	converting straight		chargeback rates. In fact,
3	sales to auto-ship		none of the processing
4	sales.		companies told me or
5			anyone else that the
6			chargeback rates were
7			too high or that they were
8			concerned about the
9			chargeback rates. Ex. A,
10			Jason Cardiff Declaration
11			¶¶106-107.
12			Redwood was never
13			penalized by any
14			merchant accounts
15			because of problems with
16			chargebacks. Id.
17	FTC Response to SUF 850: The Cardiffs do not dispute that consumer		
18	complaints and chargebacks increased after Redwood started converting straight		
19	sales to auto-ship sales; therefore, they have not created a genuine dispute of		
20	material fact in the face of specific testimony by their former employee who had		
21	knowledge of the chargeback increases. The Cardiffs' off-topic objections are		
22	argument and should be disregarded.		
23			
24	The increase in chargebacks after Redwood started converting straight sales to		
25	continuity was an indicator that the charges were fraudulent and is relevant to		
26	Defendants' liability for injunctive and monetary relief.		
27	851. Those complaints	Walker Dec. (PX-32), p.	Deny. No processing
28	and chargebacks	15, ¶ 69.	companies ended their

1	caused Redwood to		relationship with
2	lose merchant		Redwood because of
3	accounts or have		chargeback rates. In fact,
4	applications for		none of the processing
5	new accounts		companies told me or
6	denied.		anyone else that the
7	852. Jason Cardiff only	Walker Dec. (PX-32), p.	chargeback rates were
8	agreed to stop the	15, ¶ 69.	too high or that they were
9	conversion		concerned about the
10	program when it		chargeback rates. Ex. A,
11	became clear that		Jason Cardiff Declaration
12	continuing would		¶106-107.
13	cause Redwood to		Redwood was never
14	lose more merchant		penalized by any
15	accounts.		merchant accounts
16			because of problems with
17			chargebacks. Id.
18	FTC Response to SUF 851: The Cardiffs do not dispute that complaints and		
19	chargebacks resulting from Jason Cardiffs' straight-to-continuity initiative		
20	affected Redwood's ability to obtain and keep merchant accounts or that this		
21	concern prompted Jason Cardiff to end the conversion program. Their general		
22	denial does not create a genuine dispute of material fact in the face of specific		
23	testimony by Redwood's former Director of Operations. Their extraneous		
24	narrative is argument and should be disregarded.		
25	853. [reserved]		
26	854. [reserved]		
27	855. [reserved]		

X. Ringless Voicemails

FTC Fact	FTC Citation	Cardiff Admit/Objection
856. In early 2018, Jason Cardiff contracted with a company called Just Deliver It to deliver 1 million prerecorded messages, also known as robocalls or ringless voicemails (“RVM”), to consumers.	Walker Dec. (PX-32), p. 19, ¶ 82 & p. 924 (Att. 141); p. 928 (Att. 143).	Admit
857. Redwood also contracted with a telemarketing company called Gawk to deliver 1.5 million RVMs to consumers’ voicemail.	Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 36, ¶ 107 & Dkt. 10, p. 33-48 (Att. 118). Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 65-67, 72-76 (Atts. 17, 18, 21, 22). Walker Dec. (PX-32), p. 19, ¶ 82 & p. 900-915 (Att. 136) (pages out of	Admit

	order in the original); see p. 906 for reference to “One Million Five Hundred Thousand, Direct Delivery Ringless Voicemail Drops”).	
858. Jason Cardiff negotiated the contract with Gawk.	Walker Dec. (PX-32), p. 19, ¶ 83. Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 73-76 (Att. 22).	Admit
859. Redwood used Gawk’s platform to deliver 1.5 million ringless voicemail messages to consumers.	Walker Dec. (PX-32), p. 19, ¶¶ 82-83. Sands 3rd Dec. (PX-51), p. 3, ¶ 9 & p. 72 (Att. 21).	Admit
860. [reserved]		
861. [reserved]		
862. [reserved]		

XI. Rengalife

A. Defendants’ Marketing of the Rengalife Multilevel Marketing Program

FTC Fact	FTC Citation	Cardiff Admit/Objection
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1	863. Defendants	Walker Dec. (PX-32), p.	Object, not a material
2	launched the	20, ¶ 87.	fact. Defendants ceased
3	Rengalife multi-		developing “Rengalife”
4	level marketing	McDowell Dec. (PX-48),	in or about July, 2018.
5	program in March	p. 1, ¶¶ 3-5.	Dkt. 253-1 Declaration of
6	2018.		Jason Cardiff ¶17.
7		Ziolkowski Dec. (PX-	Rengalife was never an
8		49), p. 1, ¶¶ 4-5 & p. 3	active company.
9		(Att. 1) (joined Rengalife	Redwood never made
10		in March 2018).	sales or had any
11			customers because
12		Sands 2 nd Dec., Dkt. 277-	market research indicated
13		4, p. 3, ¶ 7 & p. 14 (Att.	it was not a viable
14		7).	company. Ex. A,
15			Declaration of Jason
16		Sands 3 rd Dec. (PX-51),	Cardiff ¶37.
17		p. 5, ¶ 21 & p. 237, 240,	Rengalife was a program
18		ln. 19-20 (Att. 80) (“We	that lasted and was
19		are live. Rengalife.com	advertised for about 45
20		is live. 500 founder’s	days. Rengalife was
21		spots are being filled up	started the end of march
22		right now.”).	and we stopped
23			advertising and the
24			program itself at the
25			beginning of May. <i>Id.</i> at
26			¶84.
27			No consumers acquired
28			any membership from

Rengalife. *Id.* at ¶85.

FTC Response to SUF 863: The Cardiffs do not dispute that the Rengalife multi-level marketing program launched in March 2018. Indeed, they even state that “Rengalife was a program that lasted and was advertised for about 45 days” and that it “was started at the end of march [sic] and we stopped advertising and the program itself at the beginning of May.” Dkt. 491-1, p. 36.

Jason Cardiff’s conclusory statement that Rengalife was never active is insufficient to create a genuine dispute of material fact in light of the two declarations of individuals who had joined Rengalife and purchased product through the program (FTC SUF 863, 869); Jason Cardiff’s many previous statements while marketing Rengalife to potential members, see SUF 863, 868, 884 (statements by Jason Cardiff that Rengalife was “live” and had already had numerous members join); his April 7, 2018 email bragging about signing up an additional 9 reps (see SUF 938); testimony of Redwood’s former Director of Operations that Rengalife was launched in March 2018 (FTC SUF 863, 868, 884); in light of specific testimony and documentary evidence showing active solicitation and payment by customers, FTC SUF 873-877 (email sent to a Gmail account associated with an FTC undercover identity previously used to make an undercover purchase from Redwood).

SUF 863 is a material fact with respect to Defendants’ liability for injunctive and monetary relief for false and unsubstantiated earnings claims associated with the

Rengalife multi-level marketing program. These objections do not create a disputed issue as to that fact.

864. Rengalife was founded and created by Jason Cardiff and Eunjung Cardiff.

Sands 1st Dec. (TRO PX-1), Dkt. 7, p. 50, ¶¶ 134 & Dkt. 13, p. 151 (Att. 153).

Object, not a material fact. Defendants ceased developing “Rengalife” in or about July, 2018. Dkt. 253-1 Declaration of Jason Cardiff ¶17. Rengalife was never an active company. Redwood never made sales or had any customers because market research indicated it was not a viable company. Ex. A, Declaration of Jason Cardiff ¶37.

FTC Response to SUF 864: The Cardiffs do not dispute that Rengalife was founded and created by Jason and Eunjung Cardiff. Their extraneous narrative does not address this fact and should be disregarded.

The Cardiffs’ creation of the Rengalife program is a material fact relevant to their individual liability for injunctive and monetary relief.

865. Former Redwood Director of Operations

Walker Dec. (PX-32), p. 20, ¶¶ 90, 91.

Object, not a material fact. Defendants ceased developing “Rengalife”

<p>Danielle Walker recognizes FTC TRO Exhibits PX-1, Attachments 143, 146, 149, and 156 as videos promoting Rengalife that featured Jason Cardiff.¹⁹</p>		<p>in or about July, 2018. Dkt. 253-1 Declaration of Jason Cardiff ¶17. Rengalife was never an active company. Redwood never made sales or had any customers because market research indicated it was not a viable</p>
<p>866. Former Redwood Director of Operations Danielle Walker recognizes four video files identified by the FTC as “Rengalife -- Facebook - 03.21.2018,” “Rengalife -- Facebook - 03.26.2018,”</p>	<p>Walker Dec. (PX-32), p. 20-21, ¶ 92.</p>	<p>company. Ex. A, Declaration of Jason Cardiff ¶37. Rengalife was a program that lasted and was advertised for about 45 days. Rengalife was started the end of march and we stopped advertising and the program itself at the beginning of May. <i>Id.</i> at ¶84.</p>

¹⁹ The Cardiffs submitted a single objection to SUF 865-937. To be consistent with the Commission’s original organization, this Response separates SUF 865-897 from SUF 898-937. The Commission’s Response to SUF 865-897 begins on p. 547; the Response to SUF 898-937 begins on p. 567.

1	“Rengalife --		No consumers acquired
2	Facebook -		any membership from
3	03.28.2018,” and		Rengalife. <i>Id.</i> at ¶85.
4	“Rengalife --		
5	Facebook -		
6	04.25.2018” as		
7	Rengalife videos		
8	featuring Jason		
9	Cardiff.		
10	867. Former Redwood	Walker Dec. (PX-32), p.	
11	Director of	21, ¶ 95.	
12	Operations		
13	Danielle Walker		
14	recognizes FTC		
15	TRO Exhibits PX-		
16	1, Attachments		
17	152-155 as		
18	portions of the		
19	rengalife.com		
20	website.		
21	868. Jason Cardiff	Sands 3rd Dec. (PX-51),	
22	stated in a March	p. 5, ¶ 21 & p. 237, 244,	
23	26, 2018 Facebook	ln. 13-17 (Att. 80).	
24	Live video that		
25	“we had a lot of		
26	signups this		
27	morning. We have		
28	not filled -- we		

1	have not filled all		
2	the founder's spots		
3	and I say that		
4	because everybody		
5	needs to know		
6	once the founder's		
7	spots are gone,		
8	they're completely		
9	gone."		
10	869. Consumers joined	Ziolkowski Dec. (PX-	
11	Rengalife and	49), p. 1, ¶ 6 & p. 6 (Att.	
12	purchased oral film	3) (purchased \$199.80 of	
13	strips.	oral film strips through	
14		Rengalife when he	
15		joined, and then more	
16		later).	
17			
18		McDowell Dec. (PX-48),	
19		p. 1, 2, ¶¶ 5, 7.	
20			
21		Walker Dec. (PX-32), p.	
22		21, ¶ 96.	
23	870. Defendants	Sands 1st Dec. (TRO PX-	
24	promoted	1), Dkt. 7, p. 50, ¶¶ 133,	
25	Rengalife online	134 & Dkt. 13, p. 145-	
26	with the website	166 (Att. 152-155).	
27	Rengalife.com.		
28	871. The Rengalife	Sands 1st Dec. (TRO PX-	

1	website told	1), Dkt. 7, p. 50, ¶ 134 &	
2	prospective	Dkt. 13, p. 154 (Att.	
3	members “Don’t	154).	
4	Just Make a Living		
5	... Live the		
6	Rengalife,” asked		
7	“Are You Ready to		
8	Change Your		
9	Life?”		
10	872. The Rengalife	Sands 1st Dec. (TRO PX-	
11	website told	1), Dkt. 7, p. 50, ¶ 134 &	
12	prospective	Dkt. 13, p. 155 (Att.	
13	members that:	154).	
14	“Finally your		
15	dreams can become		
16	real!		
17	It all begins by		
18	signing up as a		
19	Rengalife member.		
20	By becoming a part		
21	of the Rengalife		
22	family, you will be		
23	on the path to		
24	creating your ideal		
25	life. Whether you		
26	are looking for a		
27	few extra dollars or		
28	pursuing an		

1	opportunity to		
2	replace a full time		
3	income, Rengalife		
4	has the way.”		
5	873. On April 9, 2018, a	Sands 2 nd Dec., Dkt. 277-	
6	Gmail account	4, p. 3, ¶ 7.	
7	associated with an		
8	FTC undercover		
9	identity previously		
10	used to purchase a		
11	Redwood product		
12	was sent an email		
13	regarding		
14	Rengalife.		
15	874. The email subject	Sands 2 nd Dec., Dkt. 277-	
16	line was, “I wanted	4, p. 3, ¶ 7 & p. 14 (Att.	
17	to share 2 secrets	7).	
18	to succeed in		
19	Rengalife.”	See also Ziolkowski Dec.	
20		(PX-49), p. 1, ¶ 5 & p. 8	
21		(Att. 5) (email with same	
22		subject line).	
23	875. The email stated	Sands 2 nd Dec., Dkt. 277-	
24	that, “Since our	4, p. 3, ¶ 7 & Att. 7, p. 14	
25	official launch date	(Att. 7).	
26	on 3/26/2018 we		
27	have had over 200	See also Ziolkowski Dec.	
28	individuals become	(PX-49), p. 1, ¶ 5 & p. 8	

1	Rengalife	(Att. 5).	
2	members!”		
3	876. Also included in	Sands 2 nd Dec., Dkt. 277-	
4	the email was an	4, p. 3, ¶ 7 & p. 15 (Att.	
5	embedded video	7).	
6	titled, “I have 2		
7	Secrets for You,”	See also Ziolkowski Dec.	
8	which featured	(PX-49), p. 1, ¶ 5 & p. 8	
9	Defendant Jason	(Att. 5).	
10	Cardiff.		
11	877. The email	Sands 2 nd Dec., Dkt. 277-	
12	concluded with	4, p. 3, ¶ 7 & p. 16 (Att.	
13	“Sincerely, Jason	7).	
14	Cardiff,” and the		
15	address listed for		
16	Rengalife at the		
17	bottom of the email		
18	is 870 N. Mountain		
19	Ave. #118 Upland,		
20	CA 91786.		
21	878. Defendants	Sands 1st Dec. (TRO PX-	
22	promoted	1), Dkt. 7, p. 49-50, ¶¶	
23	Rengalife in videos	132.	
24	on their website		
25	and Facebook and	Walker Dec. (PX-32), p.	
26	YouTube.	21, ¶ 93 (videos were	
27		available on website).	
28			

1		McDowell Dec. (PX-48),
2		p. 1, ¶¶ 3, 4.
3	879. Jason Cardiff	Sands 3rd Dec. (PX-51),
4	stated in	p. 5, ¶ 21 & p. 237, 244,
5	advertising for	ln. 4 (Att. 80) (Rengalife
6	Rengalife that “this	– Facebook – 03.26.2018
7	is really simple.	video).
8	It’s really easy”	
9	and “You can earn	Sands 1st Dec. (TRO PX-
10	as much as you	1), Dkt 7, p. 49, ¶ 130 &
11	want or as little as	Dkt. 13, p. 104, 107, ln.
12	you want....”	22-23 (Att. 144) (“Who
13		is Rengalife” video).
14		
15		See also Sands 1st Dec.
16		(TRO PX-1), Dkt 7, p.
17		49-50, ¶ 132 & Dkt. 13,
18		p. 135, 138, ln. 11-16
19		(Att. 150) (“the levels,
20		like everything in the
21		Rengalife system, are
22		very simple, because
23		that’s the way we have
24		shown, through many,
25		many different studies,
26		you can be the most
27		successful, keeping it
28		very simple and

1		transparent.”).	
2	880. Jason Cardiff stated	Sands 1st Dec. (TRO PX-	
3	in advertising for	1), Dkt 7, p. 49, ¶ 130 &	
4	Rengalife that	Dkt. 13, p. 104, 107, ln.	
5	“we’ve made it	13-15 (Att. 144) (“Who	
6	simple and easy for	is Rengalife” video).	
7	every single		
8	Rengalife		
9	distributor to use, to		
10	enjoy and to		
11	understand.”		
12	881. Jason Cardiff	Sands 1st Dec. (TRO PX-	
13	stated in online	1), Dkt 7, p. 49, ¶ 130 &	
14	advertising that	Dkt. 13, p. 104, 107, ln.	
15	Rengalife “if	7-9 (Att. 144) (“Who is	
16	you’re looking to	Rengalife” video).	
17	be your own boss,		
18	if you’re looking to		
19	set your own way		
20	and decide your		
21	own destiny,” you		
22	have come to the		
23	right place.”		
24	882. Jason Cardiff	Sands 1st Dec. (TRO PX-	
25	stated in online	1), Dkt 7, p. 49, ¶ 131 &	
26	advertising that	Dkt. 13, p. 114, 118, ln.	
27	Rengalife had	21 – p. 119, ln. 1 (Att.	
28	“technology-proof”	147) (“Get Started	

1	products and this	Today” video).	
2	was important		
3	because “You	See also Sands 3rd Dec.	
4	don’t want to get	(PX-51), p. 6, ¶ 25 & p.	
5	involved in	264, 268, ln. 11-12 (Att.	
6	something . . .	84) (“You want to be	
7	where technology	involved in an	
8	can replace you.”	opportunity that is	
9		technology-proof.”).	
10	883. Jason Cardiff	Sands 1st Dec. (TRO PX-	
11	stated in online	1), Dkt 7, p. 49, ¶ 131 &	
12	advertising for	Dkt. 13, p. 114, 119, ln.	
13	Rengalife: “So	23 – p. 120, ln. 4 (Att.	
14	life-changing	147) (“Get Started	
15	products. We	Today” video).	
16	don’t cap your		
17	earnings.		
18	Unlimited team		
19	size. . . . Bonuses.		
20	Loyalty Rewards.		
21	World-class		
22	support.”		
23	884. Jason Cardiff	Sands 1st Dec. (TRO PX-	
24	stated in a	1), Dkt 7, p. 49, ¶ 131 &	
25	Facebook Live	Dkt. 13, p. 114, 121, ln.	
26	video:	12-25 (Att. 147) (“Get	
27	“[I]f I told	Started Today” video).	
28	you that you could		

1	make \$2,000 a		
2	month, \$5,000 a		
3	month, \$100,000 a		
4	month, we have		
5	somebody on pace		
6	to make . . .		
7	\$100,000 a year.		
8	We've only been		
9	live a week and a		
10	half. If I told you		
11	you had to make a		
12	little tiny		
13	investment in		
14	product for		
15	yourself to get to		
16	the executive level,		
17	if I showed you		
18	how to spend		
19	\$199.80 and you		
20	could make		
21	[\$]5,000 a month,		
22	\$6,000 a month, is		
23	that a good		
24	investment? And		
25	you would say,		
26	yes, it is, it's a very		
27	good investment."		
28	885. Jason Cardiff	Sands 1st Dec. (PX-1),	

1	emphasized the	Dkt. 7, p. 49, ¶ 131 &	
2	ease of building	Dkt. 13, p. 126, ln. 16-22	
3	teams of ten	(Att. 147).	
4	recruits:		
5	“What I told you to		
6	do was simple. All		
7	-- your whole		
8	universe is right		
9	here: your ten		
10	people. You do not		
11	care about their ten		
12	people or the other		
13	ten people. You		
14	train your group,		
15	your team		
16	(inaudible). Team		
17	John, Team Eric,		
18	Team Susie, Sally,		
19	whoever. Team --		
20	Team Rich, Team		
21	Independent, Team		
22	Happy, Team		
23	Living at-the-		
24	Beach.”		
25	886. Jason Cardiff	Sands 3rd Dec. (PX-51),	
26	stated in Rengalife	p. 5, ¶ 19 & p. 218, 221,	
27	advertising that	ln. 25 – p. 224, ln. 11	
28	Rengalife	(Att. 78).	

1	“Founders” would	
2	enjoy special	McDowell Dec. (PX-48),
3	benefits (including	p. 1-2, ¶¶ 5-6.
4	direct access to	
5	him), and that only	
6	500 Founders seats	
7	would ever be	
8	available.	
9	887. Rengalife	Sands 3rd Dec. (PX-51),
10	advertising	p. 5, ¶ 19 & p. 218, 226
11	promised	ln. 18-19; p. 227, ln. 13;
12	Executives,	p. 228, ln. 11; p. 230 ln.
13	Directors, Vice	8; p. 232; ln. 20, p. 233;
14	Presidents, and	ln. 14 (Att. 78).
15	Presidents have	
16	“five ways to	Sands 1st Dec. (TRO PX-
17	earn.”	1), Dkt 7, p. 49, ¶ 131 &
18		Dkt. 13, p. 118, ln. 13
19		(Att. 147) (“Get Started
20		Today” video).
21		
22		Sands 1st Dec. (TRO PX-
23		1), Dkt 7, p. 50, ¶ 134 &
24		Dkt. 13, p. 167 (Att. 156)
25		(“five ways to generate
26		income”) (Rengalife
27		website).
28	888. Jason Cardiff	Sands 3rd Dec. (PX-51),

1	stated in Rengalife	p. 5, ¶ 19 & p. 218, p.	
2	advertising that	226 ln. 2-7; p. 228 ln. 11-	
3	Rengalife provides	15; p. 233 ln. 14-18 (Att.	
4	“multiple Streams	78).	
5	of Income.”		
6		See also Sands 1st Dec.	
7		(TRO PX-1), Dkt 7, p., ¶	
8		133 & Dkt. 13, p. 145	
9		(Att. 152) (“We are	
10		proud to have you as part	
11		of ou[r] Multiple Stream	
12		Of Income System”).	
13	889. The Rengalife	Sands 1st Dec. (TRO PX-	
14	website said that	1), Dkt 7, p. 50, ¶ 134 &	
15	“Whether you are	Dkt. 13, p. 154, 155, (Att.	
16	looking for a few	154).	
17	extra dollars or		
18	pursuing an		
19	opportunity to		
20	replace a full time		
21	income, Rengalife		
22	has the way.”		
23	890. The Rengalife	Sands 1st Dec. (TRO PX-	
24	website’s list of the	1), Dkt 7, p. 50, ¶ 134 &	
25	“Benefits Of	Dkt. 13, p. 154, 155, (Att.	
26	Becoming a	154).	
27	Rengalife		
28	Member” included		

1	“Life Changing		
2	Products,” “No		
3	Cap On Earning”		
4	and “Easiest Pay		
5	Plan.”		
6	891. The Rengalife	Sands 1st Dec. (TRO PX-	
7	website said that	1), Dkt 7, p. 50, ¶ 134 &	
8	“As an Executive,	Dkt. 13, p. 167 (Att. 156)	
9	you have qualified	(Rengalife website).	
10	with your		
11	minimum monthly	See also Sands 3rd Dec.	
12	spend of \$199.80	(PX-51), p. 5, ¶ 21 & p.	
13	and now have	237, p. 242, ln. 15 – p.	
14	access to all 5	243, ln. 5 (Att. 80).	
15	Ways to Earn		
16	PTC – Personal		
17	team commission		
18	30% on all your		
19	team’s spending		
20	and sales		
21	10% on the team		
22	below spending		
23	and sales		
24	5% on the team		
25	below spending		
26	and sales		
27	PID – Product		
28	introduction and		

1	distribution		
2	20% commission		
3	all product sales		
4	that you sell....		
5	PTB – Product		
6	onetime bonus		
7	Receive 10%		
8	commissions for		
9	60 days after the		
10	launch of any new		
11	Rengalife product.		
12	TRT – Travel and		
13	Reflection Time		
14	Rengalife offers		
15	many levels of		
16	travel and trips to		
17	reward sales and		
18	distribution		
19	PTM – Personal		
20	Title Movement		
21	An Executive is		
22	recognized when		
23	an advancement		
24	take place to		
25	Director. This		
26	occurs when the		
27	Executive signs up		
28	its first 10		

1	Executives. This is		
2	a one-time only		
3	\$500 bonus.”		
4	892. Rengalife	Sands 1st Dec. (TRO PX-	
5	advertising	1), Dkt 7, p. 50, ¶ 134 &	
6	promised	Dkt. 13, p. 167 (Att. 156)	
7	Directors, Vice	(Rengalife website).	
8	Presidents, and		
9	Senior Vice		
10	Presidents the		
11	same Personal		
12	team commissions,		
13	product		
14	introduction and		
15	distribution		
16	commission,		
17	product onetime		
18	bonus, and travel		
19	and reflection time		
20	as Executives.		
21	893. Rengalife	Sands 1st Dec. (TRO PX-	
22	advertising	1), Dkt 7, p. 50, ¶ 134 &	
23	represented that the	Dkt. 13, p. 167 (Att. 156)	
24	Personal Title	(Rengalife website).	
25	Movement bonus		
26	when a Director		
27	advanced to Vice		
28	President by		

1	signing up “its first		
2	10 teams members		
3	[sic] at the Director		
4	level” was \$1,200.		
5	894. Rengalife	Sands 1st Dec. (TRO PX-	
6	advertising	1), Dkt 7, p. 50, ¶ 134 &	
7	represented that the	Dkt. 13, p. 167 (Att. 156)	
8	Personal Title	(Rengalife website).	
9	Movement bonus		
10	“when the Vice		
11	President advances		
12	to Senior Vice		
13	President by		
14	signing up its first		
15	10 Vice		
16	Presidents” was		
17	\$10,000.		
18	895. Jason Cardiff made	See also Sands 1st Dec.	
19	the following	(TRO PX-1), Dkt 7, p.	
20	statement in	49, ¶ 131 & Dkt. 13, p.	
21	advertising for	114, 123, ln. 12-21 (Att.	
22	Rengalife: “Now,	147) (“Get Started	
23	at this [Executive]	Today” video).	
24	level, you’re		
25	getting 30 percent		
26	commission		
27	everything		
28	everybody spends		

1	as an executive.		
2	These are all		
3	executives at this		
4	point. You're an		
5	executive as well.		
6	They're executives.		
7	Okay. So 30		
8	percent on that.		
9	They're spending		
10	\$200 times 10.		
11	They're spending		
12	\$2,000, equals to		
13	\$600 commission		
14	for you. I just made		
15	you \$600		
16	commission . . .		
17	Okay, and I'm		
18	going to show you		
19	in a couple easy		
20	steps how you can		
21	get to \$12,600 a		
22	month."		
23	896. Rengalife	Sands 1st Dec. (TRO PX-	
24	advertising claimed	1), Dkt 7, p. 50, ¶ 134 &	
25	that Directors	Dkt. 13, p. 167 (Att. 156)	
26	would receive a	(Rengalife website).	
27	"minimum		
28	monthly" paid		

1	commission of		
2	\$600; Vice		
3	Presidents would		
4	receive a		
5	“minimum		
6	monthly” paid		
7	commission of		
8	\$2,600; per month;		
9	and Senior Vice		
10	Presidents would		
11	receive a		
12	“minimum		
13	monthly” paid		
14	commission of at		
15	least \$12,600 per		
16	month.		
17	897. Jason Cardiff	Sands 1st Dec. (TRO PX-	
18	described the	1), Dkt. 7, p. 49-50, ¶ 132	
19	progression	& Dkt. 13 p. 135, 139, ln.	
20	through the	1 – p. 140, ln. 5 (Att.	
21	Rengalife system	150) (“New Levels	
22	as follows: “The	video”).	
23	next level you’re		
24	going to go to is		
25	you’re going to go		
26	from executive to		
27	director. . . . This		
28	means you have		

1 built a team of ten
2 people That
3 also locks in your
4 annual salary at a
5 minimum -- a very
6 minimum of
7 \$7,200 a year
8 The next level
9 you're going to go
10 to is to a vice
11 president level. . . .
12 And what this
13 means is
14 everybody on your
15 level that you've
16 got of your ten
17 people has signed
18 up ten people. . .
19 And at a vice
20 president level, . . .
21 you also lock in
22 your annual
23 income at a
24 minimum of over
25 \$30,000. The next
26 level is a senior
27 vice president
28 level. And not

everybody is going to get there, but I believe a lot of people will get there. This means you've filled up your first level, your second level, your third level, you've locked in your income at \$144,000 a year."

FTC Response to SUF 865-897: The Cardiffs do not dispute that their Facebook and Facebook Live videos featuring Jason Cardiff, and the Rengalife website made claims that the Rengalife program was easy, and that members could earn "as much as you want," including as much as \$144,000 per year or more.

The Cardiffs' objection that these facts are not material because Rengalife was never an active company fails to address the array of specific evidence submitted by the Commission. That evidence includes: Jason Cardiff's many previous statements to the contrary (including statements that Rengalife was "live" and had already had numerous members join) (SUF 863, 868, 884); testimony of Redwood's former Director of Operations that Rengalife was launched in March 2018 (FTC SUF 863, 868, 884); testimony and documentary evidence showing active solicitation and payment by customers, FTC SUF 873-877 (email sent to a Gmail account associated with an FTC undercover identity previously used to make an undercover purchase from Redwood; and the declarations of two

individuals who joined Rengalife and purchased Redwood film strips (FTC SUF 863, 869).

Indeed, the Cardiffs concede that “Rengalife was a program that lasted and was advertised for about 45 days. Rengalife was started the end of [M]arch and we stopped advertising and the program itself at the beginning of May.” Dkt. 491-1, p. 6, ¶127; p. 11, ¶ 201-205. They also state that they “ceased developing ‘Rengalife’ in or about July 2018.” Dkt. 491-1, p. 11 ¶ 201-205; p. 36, ¶ 863.

These facts are relevant to the Cardiffs’ liability under Section 5 of the FTC Act for false and unsubstantiated earnings claims associated with the marketing of the Rengalife multi-level marketing program.

B. Defendants’ Earnings Claims for Rengalife Were False and Unsubstantiated

FTC Fact	FTC Citation	Cardiff Admit/Objection
898. Defendants’ advertising statements about Rengalife earnings were not based on actual experience.	Walker Dec. (PX-32), p. 21, ¶ 96.	Object, not a material fact. Defendants ceased developing “Rengalife” in or about July, 2018. Dkt. 253-1 Declaration of Jason Cardiff ¶17.
899. Defendants’ advertising statements about Rengalife earnings were theoretical	Walker Dec. (PX-32), p. 21, ¶ 96. See also J. Cardiff 2nd RFA Resp., p. 8-9, ¶¶ 86-	Rengalife was never an active company. Redwood never made sales or had any customers because

1 2 3 4 5 6 7 8 9 10 11 12 13	and assumed that members could develop multiple levels of recruits who bought Redwood film strips every month.	92 (admitting that all they had were simulated data) (Sanger Dec. (PX-52), p. 1, ¶ 5 & p. 17-18 (Att. 2)). See also E. Cardiff 2nd RFA Resp., p. 8-9, ¶¶ 81-87 (admitting that all they had were simulated data) (Sanger Dec. (PX-52), p. 2, ¶ 9 & p. 69-70 (Att. 6)).	market research indicated it was not a viable company. Ex. A, Declaration of Jason Cardiff ¶37. Rengalife was a program that lasted and was advertised for about 45 days. Rengalife was started the end of march and we stopped advertising and the program itself at the
14 15 16 17 18 19	900. The FTC submitted the Declaration and accompanying expert report of Stacie A. Bosley, Ph.D.	Dkt. 210 (PX-10, Declaration of Stacie A. Bosley, Ph.D).	beginning of May. <i>Id.</i> at ¶84. No consumers acquired any membership from Rengalife. <i>Id.</i> at ¶85.
20 21 22 23 24 25 26 27 28	901. The FTC identified Dr. Bosley as an expert in its September 26, 2019 Initial Disclosures.	Sanger Dec. (PX-52), p. 2-3, ¶ 15. See also Sanger Dec. (PX-52), p. 2, ¶¶ 13-14 (FTC sent counsel for the Cardiffs copies of its four expert reports in March and April 2019).	

1	902. Dr. Bosley is an	Expert Report – Stacie A.
2	Associate	Bosley, Ph.D. (hereafter
3	Professor of	“Bosley Expert Report”)
4	Economics at	(TRO PX-10), Dkt. 210,
5	Hamline	p. 4, ¶ 1.
6	University in Saint	
7	Paul, Minnesota.	
8	She has a Ph.D. in	
9	Applied	
10	Economics and a	
11	BBA in Finance.	
12	903. Dr. Bosley’s	Bosley Expert Report
13	teaching at	(TRO PX-10), Dkt. 210,
14	Hamline	p. 5, ¶ 3.
15	University focuses	
16	on	
17	microeconomics,	
18	quantitative	
19	analysis,	
20	managerial	
21	economics, and	
22	behavioral	
23	economics.	
24	904. Dr. Bosley	Bosley Expert Report
25	researches multi-	(TRO PX-10), Dkt. 210,
26	level marketing,	p. 4, ¶ 2.
27	direct selling, and	
28	pyramid schemes,	

1	and she has written		
2	multiple academic		
3	papers on these		
4	topics, ranging		
5	from an analysis of		
6	direct selling		
7	around the world to		
8	an examination of		
9	the relationship		
10	between domestic		
11	economic		
12	conditions and		
13	multi-level		
14	marketing activity.		
15	905. Dr. Bosley	Bosley Expert Report	
16	published a 2015	(TRO PX-10), Dkt. 210,	
17	paper in the	p. 4, ¶ 2.	
18	Journal of Public		
19	Policy and		
20	Marketing		
21	addressing the		
22	intersection of		
23	multi-level		
24	marketing and		
25	pyramid scheme		
26	activity, as well as		
27	a 2018 paper in the		
28	Journal of		

1	Financial Crime		
2	analyzing		
3	community-level		
4	risk factors		
5	associated with		
6	pyramid scheme		
7	victimization, and		
8	she has presented		
9	research on these		
10	topics at numerous		
11	economics		
12	conferences around		
13	the country.		
14	906. Dr. Bosley's recent	Bosley Expert Report	
15	research projects	(TRO PX-10), Dkt. 210,	
16	use economic	p. 4, ¶ 2.	
17	experiments to		
18	explore pyramid		
19	scheme		
20	victimization and		
21	individual risk		
22	factors, as well as		
23	information		
24	disclosure and		
25	consumer earnings		
26	expectations in		
27	multi-level		
28	marketing.		

1	907. Based on her	Bosley Expert Report
2	research, training,	(TRO PX-10), Dkt. 210,
3	and knowledge,	p. 4-5, ¶¶ 2-3.
4	Dr. Bosley is an	
5	expert in multi-	
6	level marketing,	
7	direct selling, and	
8	pyramid schemes.	
9	908. Dr. Bosley's report	Bosley Expert Report
10	on the Rengalife	(TRO PX-10), Dkt. 210,
11	multi-level	p. 5, ¶ 4.
12	marketing program	
13	focused on the	
14	period of March	
15	and April 2018.	
16	909. In preparing her	Bosley Expert Report
17	report, Dr. Bosley	(TRO PX-10), Dkt. 210,
18	reviewed, among	p. 6, ¶ 5, and App. B.
19	other materials,	
20	Rengalife.com	
21	website content,	
22	and videos	
23	available on	
24	YouTube and	
25	Facebook,	
26	including	
27	documents or	
28	audio-visual files	

1	available to		
2	Rengalife		
3	Distributors or		
4	recruits, including		
5	the firm's		
6	Distributor		
7	Agreement,		
8	Policies &		
9	Procedures, and		
10	Terms &		
11	Conditions as well		
12	as training and		
13	marketing		
14	materials.		
15	910. Rengalife had two	Sands 3rd Dec. (PX-51),	
16	entry levels:	p. 5, ¶ 23 & p. 248, 256,	
17	Junior Executive	ln. 22-25 (Att. 82)	
18	and Executive.	(March 28, 2018 video).	
19			
20		Sands 1st Dec. (TRO PX-	
21		1), Dkt 7, p. 50, ¶ 134 &	
22		Dkt. 13, p. 167 (Att. 156)	
23		(Rengalife website).	
24	911. A Junior Executive	Sands 3rd Dec. (PX-51),	
25	could earn a	p. 5, ¶ 21 & p. 237, 241,	
26	commission	ln. 14-21 (Att. 80)	
27	products sold to	(March 26, 2018 video).	
28	retail customers,		

1	but could not build	Sands 3rd Dec. (PX-51),	
2	a team or earn	p. 5, ¶ 23 & p. 24, 257,	
3	other income or	ln. 8-14 (Att. 82) (March	
4	bonuses.	28, 2018 video).	
5			
6		Sands 1st Dec. (TRO PX-	
7		1), Dkt 7, p. 50, ¶ 134 &	
8		Dkt. 13, p. 167 (Att. 156)	
9		(Rengalife website).	
10	912. Jason Cardiff	Sands 3rd Dec. (PX-51),	
11	discouraged	p. 5, ¶ 21 & p. 237, 241,	
12	prospective	ln. 13-25 (Att. 80)	
13	Rengalife members	(March 26, 2018 video).	
14	from joining as		
15	Junior Executives	See also Sands 1st Dec.	
16	because “you do	(TRO PX-1), Dkt 7, p.	
17	not get to build a	49, ¶ 131 & Dkt. 13, p.	
18	team, you do not	114, 120, ln. 9-15 (Att.	
19	get to build a team.	147) (“Get Started	
20	You do not qualify	Today” video) (Junior	
21	for trips, you do	Executives “earn only	
22	not qualify for	one way, not five ways”	
23	bonuses, you do	and “[are] not eligible to	
24	not qualify for one-	build a team.”).	
25	time bonuses,		
26	expansion bonuses,		
27	product bonuses,		
28	any additional pay		

1	bonuses that we		
2	put out there.”		
3	913. Jason Cardiff	Sands 1st Dec. (TRO PX-	
4	stated in Renglife	1), Dkt 7, p. 49, ¶ 131 &	
5	advertising that	Dkt. 13, p. 114, 120, ln.	
6	“Executive level is	22-25 (Att. 147).	
7	the level you want		
8	to be at. That’s the		
9	level where you get		
10	– you get . . . 30		
11	percent		
12	commission, you		
13	get team-building,		
14	you get trips, you		
15	get everything,		
16	right?”		
17	914. Renglife members	Sands 1st Dec. (TRO PX-	
18	were required to	1), Dkt 7, p. 50, ¶ 134 &	
19	purchase \$199.80	Dkt. 13, p. 167 (Att. 156)	
20	of Renglife	(“minimum monthly	
21	products each	spend of \$199.80”)	
22	month.	(Renglife website).	
23			
24		Walker Dec. (PX-32), p.	
25		20, ¶ 87 (monthly	
26		purchase of Redwood	
27		film strips required).	
28			

	<p>See also Ziolkowski Dec. (PX-49), p. 1, ¶¶ 4, 6 & p. 6 (Att. 3) (\$199.80 in purchases at outset; understood that buying a minimum amount of product was required).</p> <p>See also Sands 1st Dec. (TRO PX-1), Dkt 7, p. 49, ¶ 131 & Dkt. 13, p. 114, 123, ln. 12-21 (Att. 147) (Jason Cardiff stating that executives all spend \$200 per month”).</p>	
<p>915. Rengalife’s products were Redwood Scientific Technologies oral film strips, including TBX-FREE, Eupepsia Thin, and Prolongz.</p>	<p>Sands 1st Dec. (TRO PX-1), Dkt 7, p. 50, ¶ 134 & Dkt. 13, p. 151, 152 (Att. 153); p. 154, 155 (Att. 154); p. 163 (Att. 155) (“Rengalife has paired with Redwood Scientific Technologies, the world leader in oral thin film delivery for everyday health and lifestyle issues.”).</p>	
<p>916. The Rengalife</p>	<p>Sands 3rd Dec. (PX-51),</p>	

1	program had three	p. 5, ¶ 21 & p. 237, 242,	
2	levels above	ln. 18 – p. 163, ln. 3 (Att.	
3	Executive:	80).	
4	Director, Vice		
5	President, and	Sands 3rd Dec. (PX-51),	
6	Senior Vice	p. 7, ¶ 25 & p. 264, 273,	
7	President.	ln. 3-6 (Att. 84).	
8			
9		Sands 1st Dec. (TRO PX-	
10		1), Dkt. 7, p. 50, ¶ 134 &	
11		Dkt. 13, p. 167 (Att. 156)	
12		(Rengalife webpage	
13		video).	
14	917. Rengalife members	Sands 3rd Dec. (PX-51),	
15	would move up to	p. 5, ¶ 21 & p. 237, 242,	
16	the next level	ln. 18 – p. 163, ln. 3 (Att.	
17	based on the	80).	
18	successful		
19	recruitment of	Sands 1st Dec. (TRO PX-	
20	members in their	1), Dkt. 7, p. 49-50, ¶ 132	
21	downline network.	& Dkt. 13, p. 139, ln. 1 –	
22		p. 140, ln. 9 (Att. 150)	
23		(Rengalife “New Levels”	
24		video).	
25	918. To become a	Sands 3rd Dec. (PX-51),	
26	Rengalife Director,	p. 5, ¶ 21 & p. 237, 242,	
27	an Executive had	ln. 21-24 (Att. 80).	
28	to recruit 10 people		

1	in his or her	Bosley Expert Report	
2	“downline”	(TRO PX-10), Dkt. 210,	
3	network who	p. 12-13, ¶ 14 & Table 1.	
4	would buy \$199.80		
5	of Redwood		
6	Scientific		
7	Technologies oral		
8	film strips every		
9	month.		
10	919. To become a	Bosley Expert Report	
11	Rengalife Vice	(TRO PX-10), Dkt. 210,	
12	President, every	p. 12-13, ¶ 14 & Table 1.	
13	one of a Director’s		
14	10 first-level		
15	downline recruits		
16	would have to		
17	recruit 10 people in		
18	his or her own		
19	“downline”		
20	network who		
21	would buy \$199.80		
22	of Redwood		
23	Scientific		
24	Technologies oral		
25	film strips every		
26	month.		
27	920. Becoming a	Bosley Expert Report	
28	Rengalife Vice	(TRO PX-10), Dkt. 210,	

1	President required	p. 12-13, ¶ 14 & Table 1.
2	a total of 110	
3	downline people in	
4	the member's	
5	network: 10 in the	
6	first level and 100	
7	in the second level.	
8	921. To become a	Bosley Expert Report
9	Rengalife Senior	(TRO PX-10), Dkt. 210,
10	Vice President,	p.12-13, ¶ 14 & Table 1.
11	each of the Vice	
12	President's 100	
13	second level	
14	downline recruits	
15	would have to	
16	recruit 10 people in	
17	his or her own	
18	"downline"	
19	network who	
20	would buy \$199.80	
21	of Redwood	
22	Scientific	
23	Technologies oral	
24	film strips every	
25	month.	
26	922. Becoming a	Bosley Expert Report
27	Rengalife Senior	(TRO PX-10), Dkt. 210,
28	Vice President	p. 12-13, ¶ 14 & Table 1.

1	required having 10		
2	downline Vice		
3	Presidents, 100		
4	downline		
5	Directors, and		
6	1,000 downline		
7	Executives, for a		
8	total of 1,110		
9	people in the		
10	member's		
11	downline network.		
12	923. Rengalife was	Bosley Expert Report	
13	structured as a	(TRO PX-10), Dkt. 210,	
14	pay-recruit ten-	p. 13, ¶ 15.	
15	duplicate model.		
16	924. A pay-recruit ten-	Bosley Expert Report	
17	duplicate model	(TRO PX-10), Dkt. 210,	
18	means each	p. 13, ¶ 15.	
19	participant meets		
20	minimum monthly		
21	purchase		
22	requirements,		
23	recruits ten people		
24	to do the same, and		
25	teaches those ten		
26	recruits to repeat		
27	the process.		
28	925. Rengalife training	Bosley Expert Report	

1	and marketing	(TRO PX-10), Dkt. 210,	
2	materials	p. 8, ¶ 10.	
3	consistently		
4	instructed potential		
5	and current		
6	members to focus		
7	on recruiting new		
8	members.		
9	926. Rengalife training	Bosley Expert Report	
10	and marketing	(TRO PX-10), Dkt. 210,	
11	materials claimed	p. 8, ¶ 10.	
12	guaranteed		
13	minimum income		
14	levels for meeting		
15	recruitment targets.		
16	927. Commissions from	Sands 3rd Dec. (PX-51),	
17	building your team	p. 5, ¶ 19 & p. 218, 228,	
18	were the most	ln. 19 – p. 229, ln. 12; p.	
19	important source of	230, ln. 8-9 (“five ways	
20	income in the	to eearn include you	
21	Rengalife program.	build your team, which is	
22		money.” (Att. 78) (March	
23		21, 2018 video).	
24			
25		Sands 1st Dec. (TRO PX-	
26		1), Dkt. 7, p. 50, ¶ 134 &	
27		Dkt. 13, p. 167 (Att. 156)	
28		(Rengalife webpage	

1		video, citing “minimum	
2		monthly paid	
3		commissions for	
4		Directors, Vice	
5		Presidents, and Senior	
6		Vice Presidents).	
7			
8		See also Sands 1st Dec.	
9		(TRO PX-1), Dkt. 7, p.	
10		49-50, ¶ 132 & Dkt. 13 p.	
11		135, 139, ln. 1 – p. 140,	
12		ln. 5 (Att. 150)	
13		(guaranteed minimum	
14		income is from team	
15		building).	
16	928. It is Dr. Bosley’s	Bosley Expert Report	
17	unrebutted expert	(TRO PX-10), Dkt. 210,	
18	opinion that	p. 31, ¶ 34; p. 34, ¶ 37.	
19	“Rengalife		
20	earnings claims are		
21	based almost		
22	exclusively on		
23	Distributor		
24	purchases (not		
25	sales to Customers)		
26	and advancement		
27	is driven by the		
28	number of		

1	recruited	
2	Distributors.”	
3	929. It is Dr. Bosley’s	Bosley Expert Report
4	unrebutted expert	(TRO PX-10), Dkt. 210,
5	opinion that	p. 31, ¶ 34; see also p. 8,
6	Rengalife	¶ 10.
7	advancement “is	
8	driven by the	
9	number of	
10	recruited	
11	Distributors.”	
12	930. It is Dr. Bosley’s	Bosley Expert Report
13	unrebutted expert	(TRO PX-10), Dkt. 210,
14	opinion that the	p. 8, ¶ 10.
15	rewards for selling	
16	Redwood products	
17	were so dwarfed by	
18	recruitment-based	
19	rewards as to be	
20	effectively	
21	meaningless in the	
22	context of the	
23	Rengalife system	
24	as a whole.	
25	931. It is Dr. Bosley’s	Bosley Expert Report
26	unrebutted expert	(TRO PX-10), Dkt. 210,
27	opinion that the	p. 17, ¶ 17; p. 28, ¶ 30; p.
28	promised income	34, ¶ 37.

1	rewards for		
2	Rengalife members		
3	would be realized		
4	only if successful		
5	recruitment		
6	continued		
7	indefinitely.		
8	932. It is Dr. Bosley's	Bosley Expert Report	
9	unrebutted expert	(TRO PX-10), Dkt. 210,	
10	opinion that by	p. 6, ¶ 7; p.7, ¶ 8.	
11	design and		
12	structure, a		
13	program in which		
14	earnings are		
15	dependent on		
16	recruiting others is		
17	a system where the		
18	vast majority of		
19	members cannot		
20	recoup their		
21	personal		
22	investment.		
23	933. It is Dr. Bosley's	Bosley Expert Report	
24	unrebutted expert	(TRO PX-10), Dkt. 210,	
25	opinion that the	p. 33-34, ¶ 37.	
26	vast majority of		
27	Rengalife		
28	participants would		

1	not be expected to		
2	earn enough to		
3	cover their own		
4	investment.		
5	934. It is Dr. Bosley's	Bosley Expert Report	
6	unrebutted expert	(TRO PX-10), Dkt. 210,	
7	opinion that at any	p. 27-28, ¶ 30; p. 28-29, ¶	
8	point in time, the	30 & Table 2; and p. 34,	
9	overwhelming	¶ 37.	
10	majority of		
11	Rengalife members		
12	would be in a loss		
13	position overall.		
14	935. It is Dr. Bosley's	Bosley Expert Report	
15	unrebutted expert	(TRO PX-10), Dkt. 210,	
16	opinion that	p. 31, ¶ 33.	
17	Rengalife's		
18	program was		
19	effectively an		
20	endless recruitment		
21	chain that		
22	misrepresented		
23	income potential		
24	and would deliver		
25	losses to the		
26	majority of		
27	participants.		
28	936. It is Dr. Bosley's	Bosley Expert Report	

1	unrebutted expert	(TRO PX-10), Dkt. 210,	
2	opinion that	p. 27-28, ¶ 30; p. 34, ¶	
3	earning claims for	37.	
4	the Rengalife		
5	program were false		
6	or unsupported.		
7	937. The Cardiffs did	Sanger Dec. (PX-52), p.	
8	not submit any	3, ¶ 19.	
9	expert report		
10	disagreeing with		
11	Dr. Bosley's		
12	conclusions about		
13	Rengalife or		
14	supporting the		
15	Rengalife claims		
16	challenged in this		
17	proceeding.		
18	FTC Response to SUF 898-937: The Cardiffs do not dispute that their		
19	advertising statements about Rengalife earnings were not based on actual		
20	experience, but were theoretical and assumed that members could develop		
21	multiple levels of recruits who bought Redwood film strips every month. Nor do		
22	they dispute the analysis and conclusions of the FTC's multi-level marketing		
23	expert, Dr. Stacie Bosley (FTC SUF 928-936).		
24			
25	The Cardiffs' objection that these are not material facts because Rengalife "was		
26	never an active company" fails to address the array of specific evidence		
27	submitted by the Commission. That evidence includes: Jason Cardiff's		
28	many explicit previous statements to the contrary (including statements that		

Rengalife was “live” and had already had numerous members join) (SUF 863, 868, 884); testimony of Redwood’s former Director of Operations that Rengalife was launched in March 2018 (FTC SUF 863, 868, 884); testimony and documentary evidence showing active solicitation and payment by customers, FTC SUF 873-877 (email sent to a Gmail account associated with an FTC undercover identity previously used to make an undercover purchase from Redwood; and the declarations of two individuals who joined Rengalife and purchased Redwood film strips through the program (FTC SUF 863, 869).

Indeed, the Cardiffs concede that “Rengalife was a program that lasted and was advertised for about 45 days. Rengalife was started the end of [M]arch and we stopped advertising and the program itself at the beginning of May.” Dkt. 491-1, p. 6, ¶127; p. 11, ¶ 201-205. They also state that they “ceased developing ‘Rengalife’ in or about July 2018.” Dkt. 491-1, p. 11 ¶ 201-205; p. 36, ¶ 863.

These facts are relevant to the Cardiffs’ liability for injunctive and monetary relief under Section 5 of the FTC Act for false and unsubstantiated earnings claims associated with the marketing of the Rengalife multi-level marketing program.

XII. FTC’s Response to Additional Material Facts In Cardiff Defendants’ Statement of Genuine Disputes

Cardiffs’ Additional Material Fact	FTC Response to Cardiffs’ Additional Material Fact	FTC Response Citation
“Defendants stopped its [sic] marketing	FTC SUF 938. Defendants continued advertising TBX-FREE, Eupepsia Thin, and	Dkt. 441-1, p. 6, ¶ 21 (Cardiff Defendants admit they delivered ringless

1	campaigns in or	Prolongz after February 2018.	voicemails to consumers
2	about February,		through July 2018).
3	2018. Dkt. 429-1		
4	PX 38 at 101-102;		Dkt. 428-2, p. 5, ¶ 16 (In
5	Ex. A,		September 2018, Redwood
6	Declaration of		sales representatives began
7	Jason Cardiff ¶¶7,		using an autodialer to call
8	9, and 46-53.”		old customer lists. Redwood
9	[and close		employee Sarah Garcia was
10	variants, including		instructed to try to “resell
11	variants citing		film strip products to former
12	January 25, 2018		customers or interest them in
13	and January 25,		Redwood’s new products,
14	2018 as the cut-		including Cloverstrips.”
15	off date]		
16			See also SUFs 939-941
17			(websites for TBX-FREE,
18			Eupepsia Thin, and Prolongz
19			were active and captured by
20			Internet Archive through at
21			least August 29, 2018,
22			August 9, 2018, and October
23			8, 2018, respectively).
24			
25			See also Sands Dec., p. 1, ¶ 2
26			& p. 13 (Att. 3):
27			On April 30, 2018, Julie
28			Green sent an email to

Danielle Cadiz with the subject line, “Screenshots of prolongz (current site).” The content of the email contained the URL <https://prolongz.com/v1/>.

See also Sands Dec., p. 1, ¶ 2 & p. 23 (Att. 6):

On April 6 and 7, 2018, Jason Cardiff and Brent Jay of Brokerage Advisory, LLC exchanged emails about Rengalife. Jason Cardiff’s initial email stated, “Since our official launch date on 3/26/2018 we have had over 200 individuals become Rengalife members!” The next day, Jason Cardiff told Brent Jay, “We signed up 9 new reps today.”

See also Sands Decl., p. 1, ¶ 2 & p. 14-15 (Att. 4):

On April 12, 2018, Redwood’s Director of Operations emailed Brent

Jay and Jason Cardiff a draft Redwood Scientific Technologies Board Resolution that provided for payment to Mr. Jay's Brokerage Advisory Trust of 15 million shares of Redwood stock in exchange for "help with consulting and marketing strategies."

That same day, Jason Cardiff forwarded a Redwood press release to Brent Jay, saying, "It's out... Web site updated as well." *Id.* at p. 26-27 (Att. 7).

The press release, dated April 12, 2018, contained the headline: "Redwood Scientific Technologies (RSCI), the global leader in oral thin film delivery for over the counter drugs, has started the early stages of exploration for delivery prescription opioids in..."

Sands Dec., p. 1-2, ¶ 3 & p. 28 (Att. 8).

The April 12, 2018 press release contained the following statement, among others: “RSCI currently has 12 products in the market and is growing its suite faster than planned, with plans to have prescription-based medications in the market by the first quarter of 2019.” *Id.* at p. 3.

See also Sands Dec. p. 1, ¶ 2 & p. 16, 17 (Att. 5):

On April 26, 2018, Julie Green sent an email to Jason Cardiff and Brent Jay containing “statistics from adestra our email marketing tool.” The statistics show that Redwood sent over 1.3 million emails advertising TBX-FREE, Eupepsia Thin, and Product X from April 1, 2018 to April 26, 2018. Julie

Green stated that Redwood's "click through rate" was 34% (TBX-FREE), 43% (Epep), and 23% (Product X). Julie Green's email also describes the order fulfillment process: "orders placed in CRM via checkout form on website, nightly batch sent to shipstation (our fulfillment) from our CRM at 4am with order and shipping details, order processed and shipped via usps."

See also Sands Dec., p. 2, ¶ 4 & p. 36 (Att. 9):
Redwood released another press release on May 14, 2018 with the headline: "Redwood Scientific Technologies, Inc. Will Up-list Trading on OTC Market."

The May 14, 2018 press release contained the

1 following statements, among
2 others:

3 “Jason Cardiff, RSCI
4 Founder and President
5 commented, ‘We look
6 forward to being a fully
7 reporting and transparent
8 company for our
9 shareholders as well as the
10 public.’ Jason also stated
11 that, ‘As we start distribution
12 with the nation’s largest
13 national pharmacy chain,
14 being a fully reporting
15 company gives us a much
16 greater level of confidence to
17 our partners and
18 shareholders.’” *Id.* at p. 36.

19
20 See also Sands Dec., p. 1, ¶ 2
21 & p. 10 (Att. 1):

22 Redwood maintained a
23 spreadsheet tracking
24 advertising expenses,
25 promotions, and sales on
26 Amazon for the period
27 March 2018-August 2018.

28 The sheet for July 2018, e.g.,

		shows \$19,167.36 in sales, a daily budget for “July Sponshor [sic] Ads” of \$260.00, and a “spend” of \$392.36. “June Payments to Zion” appears in red text below the monthly sales total. The sheet for August 2018, e.g., shows “July Payments to First Western Trust” in the amounts of \$5,940.02 (August 10) and \$2,200.75 (August 24).
<p>“Defendants stopped marketing and changed the claims that were made on their [TBX-FREE] website[] in or about February, 2018. Dkt. 429-1 PX 38 at 101-102; Ex. A, Jason Cardiff Declaration ¶¶7, 9, and 46-53.”</p>	<p>FTC SUF 939. Defendants continued to advertise TBX-FREE on the website ordertbxfree.com at least as late as August 29, 2018 and that website contained the following claims, among others:</p> <p>The Breakthrough Stop Smoking Aid</p> <p>The Only Stop Smoking Aid With Scientifically Proven Thin Film Technology!</p>	<p>Sands Dec., p. 3, ¶ 7 & p. 51-55 (Att. 12).</p>

1		
2		Proven to help smokers quit
3		their addiction with an 88%
4		success rate!
5		
6		Get TBX-FREE And Say
7		Goodbye To Your Smoking
8		Addiction!
9		Stop Wasting Money On
10		Nicotine Gum And Patches
11		That Don't Work!
12		
13		Nicotine gum and other stop
14		smoking aids only prolong
15		your addiction by giving you
16		reduced amounts of nicotine.
17		TBX-FREE is nicotine-free
18		and FDA registered for
19		maximum safety and
20		effectiveness.
21		
22		Finally Quit For Good With
23		TBX-FREE!
24		
25		88% Success Rate in clinical
26		trials!
27		
28		Redwood Scientific

1		Technologies is bringing to	
2		you TBX-FREE; the	
3		breakthrough stop smoking	
4		aid that is allowing people	
5		that have been addicted to	
6		smoking for years to finally	
7		quit and never look back.	
8	“Defendants	FTC SUF 940. Defendants	Dkt. 434-1, p. 6 (¶18), 188-
9	stopped marketing	continued to advertise	217 (Att. 76).
10	and changed the	Eupepsia Thin on the website	
11	claims that were	controltheweight.com at least	
12	made on their	as late as August 9, 2018 and	
13	[Eupepsia Thin]	the website contained the	
14	website[] in or	following claims, among	
15	about February,	others:	
16	2018. Dkt. 429-1		
17	PX 38 at 101-102;	[image of Made in USA seal]	
18	Ex. A, Jason		
19	Cardiff	April Lost 30 lbs; Jon Lost 90	
20	Declaration ¶¶7,	lbs; Sara Lost 27 lbs	
21	9, and 46-53.”		
22		No diets, no giving up food	
23			
24		“I’m half the size I used to	
25		be” – Karen	
26			
27		“I lost 45lbs. I went from	
28		230lbs back down to 185lbs.”	

1		– Danny	
2			
3		Reach your weight loss goals	
4	“Defendants	FTC SUF 941. Defendants	Sands Dec., p. 2-3, ¶ 5 & p.
5	stopped marketing	continued to advertise	38-41 (Att. 10)
6	and changed the	Prolongz on the websites	(getprolongz.com); p. 3, ¶ 6
7	claims that were	getprolongz.com,	& p. 42-50 (Att. 11)
8	made on their	amilonger.com, and	(amilonger.com); p. 3, ¶ 8 &
9	[Prolongz]	prolongz.com/v1 at least as	p. 56-64 (Att. 13)
10	website[] in or	late as August 6, 2018,	(prolongz.com/v1).
11	about February,	August 18, 2018, and October	
12	2018. Dkt. 429-1	8, 2018, respectively, and the	
13	PX 38 at 101-102;	websites contained the	
14	Ex. A, Jason	following claims, among	
15	Cardiff	others:	
16	Declaration ¶¶7,		
17	9, and 46-53.”	ORDER NOW	
18		Prolongz is a [sic] FDA	
19		registered OTC homeopathic	
20		drug which helps in the	
21		prevention of Premature	
22		Ejaculation (PE). It is a first	
23		of its kind product which uses	
24		oral (sublingual) dissolvable	
25		strip delivery technology for	
26		the treatment of PE.	
27			
28		-Increased Ejaculation	

1	Control	
2	-Medically recommended	
3		
4	LONGER LASTING SEX!	
5		
6	Proven to effectively increase	
7	the length in Sex for over	
8	97% of Thousands of Men	
9	who have tried Prolongz.	
10		
11	Longer lasting sex is	
12	achievable. Prolongz will	
13	make you firmer and last	
14	longer.	
15		
16	AS SEEN ON NATIONAL	
17	TELEVISION	
18	PRESS PLAY TO VIEW	
19	Ryan W.	
20	“I wouldn’t be able to prolong	
21	it... AMI has given the	
22	longevity.”	

23

24

25

26 Dated: September 21, 2020 s/ Elizabeth Jones Sanger

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